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Spring 2015 Utton Center Newsletter

Utton Center, UNM School of Law

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Note from the Director

As the new Director of the Utton Center, I am fortunate to work with incredibly talented students and passionate members of our community. As I stepped into this role I knew the work would be exciting and important. What I did not foresee was how much fun it would be.

We are striving to provide high quality impartial service to our students, our University, and our State. Our "Lunch and Learn" program and our continuing legal education lecture series are more robust than ever, due largely to our partnership with the School of Law’s Natural Resource Faculty and the Natural Resources, Energy and Environmental Law Section of the State Bar. We have also been busy organizing and speaking at conferences, guest lecturing in classes across campus and in the community, and taking on special projects.

I am proud that we have been able to engage so many students and want to thank Anne Minard, Cyd Schulte, Brenna Gaytan, Diego Urbina, Elizabeth Reitzel, Laura Callanan, Stephanie Russo, David Ketai, and Zach Ogaz for their exceptional work. With their help, the Utton Center has provided support to the National Young Farmers Coalition, the National Fish and Wildlife Foundation, the State Legislature, and others. I have also enjoyed the great advantage of having Marilyn O’Leary stay on an extra year after stepping down as our former Director. Like Al
Utton, Marilyn has made an indelible contribution at the School of Law and the Utton Center.

There is a great deal more to come. Most notably, a biography of Al Utton written by Michelle Minis will be published soon, aptly entitled "Aztec Eagle." Inspired by Professor Utton's inimitable spirit, the Utton Center will continue to serve you and all of New Mexico.

Adrian Oglesby, Director

Upcoming Event

April 23: CLE Lecture with Assistant Attorney General Bidtah Becker, Navajo Nation Department of Justice: "We've Only Just Begun-Tribal Water Rights Settlement Implementation"

For event details go to http://uttoncenter.edu

2015 Water Matters!

The Utton Center is pleased to announce the publication of the Water Matters! update for 2015 in a new format. This year our signature publication was provided to the New Mexico state legislature in a flash drive, which included a number of other publications of the Utton Center as well.


Written by Utton Center staff, UNM law students, and water experts and attorneys, Water Matters! is reviewed by professional consultants. The Utton Center would like to thank all who contributed.
Utton Center Hosts Conference on Resilience in Water Management

By Marilyn O'Leary, Visiting Research Professor

In response to a call from the Legislature the Utton Center convened forty experienced water managers, lawyers, scientists, engineers, and academics to explore water law and policy options for New Mexico.

To encourage imaginative and courageous thinking, we imposed The Chatham House Rule, which allows participants to use any information provided at the conference but requires that the identity of the person who provides that information remain confidential. Liberated from fear of reprisals, the group freely proposed changes to New Mexico water law and policy to help New Mexico incorporate the concept of resilience into its water management objectives and avoid future conflicts over water.

Resilience is the capacity to accommodate environmental and social conditions different from those that existed when particular laws and infrastructure were created. If a system can absorb disturbances and still maintain its functions and structure, it is resilient. If a system cannot adapt to changing conditions, it is not resilient.

Our physical and legal infrastructure was built for stable conditions and not adaptability, crafted during times of relatively predictable precipitation and temperature patterns. Changes in these patterns have resulted in uncertainty about New Mexico’s water supply. New Mexico’s economic and social well-being depend on our ability to adapt to future changes and disturbances in our water supply.

To help overcome these challenges and advance the conversation about resilient water management in New Mexico, the Utton Center conference participants chose to focus on six areas:

- Water planning
- Water rights administration
- Water storage
• Preservation of agricultural uses
• Ensuring water availability for recreation, tourism, and ecology
• Funding sources for water management.

The participants made recommendations related to these areas, which will become the basis of a report to the legislature. The conference fulfilled the mission of the Center to bring together experts in multidisciplinary fields related to water policy. The discussion was rich and creative, and we hope will result in useful recommendations that will make New Mexico water policy more resilient.

The conference was underwritten by a grant from the The McCune Charitable Foundation with additional funding by the Water Resources Research Institute at New Mexico State University.
Professor Bonnie Colby

Water Banking for a Resilient New Mexico Economy

Bonnie Colby, Ph.D., is a professor in the University of Arizona's Department of Agricultural and Resource Economics. On March 27, she presented the final lecture in our Resilience in Water Management project to participants from the Resilience in Water Management conference, and faculty and students from both the UNM Water Resource Program and UNM School of Law.

Dr. Colby's research is in water resource economics, and in particular, regional adaptation to drought and water scarcity. Some of her current projects involve designing new mechanisms to address water shortage risks across urban, agricultural and instream water uses. She discussed successful water banks in western states, the economics of water banking and what makes it work, and the effect of transaction costs on the rate of banking.

Americans for a Clean Energy Grid Southwest Summit

The Utton Center partnered with Americans for a Clean Energy Grid and High Country News to host the Southwest Clean Energy Transmission Summit on April 1st at the University of New Mexico Science & Technology Park. The goal of the Summit was to improve our understanding of the opportunities and barriers in the development of clean energy transmission capacity.

The Summit brought together key stakeholder groups, including utilities, environmental advocates, consumer interests, landowners, state and federal elected officials and regulators, renewable energy producers, and transmission developers.
Senator Martin Heinrich, Congressman Ben Ray Lujan, and Congresswoman Michelle Lujan Grisham all addressed the Summit, inspiring discussions focused on the benefits of a robust and modern energy transmission grid in the Southwest.

Senator Martin Heinrich

Solicitor Hilary Tompkins

Hilary Tompkins, the Solicitor of the Department of the Interior, presented a Lunch & Learn lecture to students on April 6 describing her background and career path to her present position.

Solicitor Tompkins was named solicitor by former Secretary of the Interior Ken Salazar and currently serves Secretary Sally Jewell. The Department of the Interior has responsibility for most of our federal public lands and natural resources. This includes fostering the wisest use of our land and water resources, protecting our fish and wildlife, preserving the environmental and cultural values of our national parks and historic places, and ensuring the federal trust obligation to Native American Nations is met.

As a member of the Navajo Nation, Solicitor Tompkins grew up in New Jersey far from her Navajo roots. She related her experiences from her education at Dartmouth and Stanford Law School, serving as law clerk for the Navajo Nation Supreme Court, as U.S. Attorney in the Eastern District of New York, working in private practice, serving as Chief Counsel to former New Mexico Governor Bill Richardson, and as an adjunct professor at UNM School of Law.

At each juncture, Solicitor Tompkins followed her intuition and challenged herself...
to build a diverse and compelling set of credentials that led her to the next career opportunity.

The event was hosted by the Law and Indigenous People's Program with the Utton Center and the School of Law's Natural Resources and Environmental Law Program.

2014-2015 Spring Continuing Legal Education Lecture Series

These lectures were hosted by the Natural Resources and Environmental Law Program and the Utton Center with the support of the Natural Resources, Energy, and Environmental Law Section of the New Mexico Bar Association.

Commissioner Norman Bay


Given the alphabet soup of federal agencies, even Washington insiders can be unaware of FERC and what it does. Commissioner Bay provided background on FERC and answered certain basic questions about the function of the FERC and its jurisdiction. He provided an overview of the energy markets today, focusing on
significant trends and developments. Finally, he discussed several emerging challenges in the energy markets.

Commissioner Bay was welcomed back to the School of Law by a large group of alumni and former colleagues from his days as professor here. A reception was held in his honor following the lecture.

New Mexico Environment Department
Secretary Ryan Flynn

An Overview of EPA's Proposed Rules for Existing Power Plants

On October 22, the UNM School of Law welcomed Cabinet Secretary Ryan Flynn, who spoke on the rules proposed by the EPA in June 2014, which are aimed at reducing greenhouse gas emissions from existing and modified fossil fuel power plants under Section 111(d) of the Clean Air Act.

EPA's proposal has broad implications for the economy and the environment and may generate a significant amount of litigation over the next few years. Secretary Flynn provided an overview of the 111(d) rule-making process and discuss some of the legal issues surrounding the proposed rules.

Prior to becoming Secretary, Flynn served as the Environment Department's General Counsel and Legislative Coordinator. Before joining the Environment Department, Flynn practiced law at the Modrall Sperling law firm in the Commercial Litigation and Renewable Energy groups.
On November 6, the UNM School of Law welcomed attorneys, David Yepa and Tom Luebben to deliver a lecture on "Aboriginal Indian Title Land Claims- Pueblo of Jemez v. United States.

David Yepa, is General Counsel for the Pueblo of Jemez, and primarily works in the area of Federal Indian law including water litigation and natural resource matters. He outlined the extent and use of the Valles Caldera National Preserve by the Jemez people since 1400 A.D. and showed slides of the ruins left after many hundreds of years.

Tom Luebben, whose practice included a wide variety of experience in aboriginal land claims throughout the United States, gave a history of the litigation and background of aboriginal land claim disputes and the pertinent treaties and litigation.

The doctrine of aboriginal Indian title continues to be a fundamental part of federal Indian law and the common law of property. Native American title claims have continuing importance to tribes and Supreme Court case law recognizes that such claims persist until clearly extinguished. The lecture reviewed the law of aboriginal title and discussed the current case before the Tenth Circuit Court of Appeals, Pueblo of Jemez v. United States (oral arguments were presented at the law school on November 13, 2014), in which the federal Quiet Title Act is being utilized to
assert Jemez Pueblo's aboriginal title to the Valles Caldera National Preserve. The Valles Caldera and Wavema (Redondo Peak) are Jemez Pueblo's most important sacred sites, analogous to Taos Pueblo's Blue Lake.

2014-2015 Lunch & Learn Lecture Series

These lectures were hosted by the Natural Resources and Environmental Law Program and the Utton Center with the support of student organizations of the School of Law including the Environmental Law Society, the Business Law Society, and the Student Animal Legal Defense Fund.
Attorney Judy Calman with the New Mexico Wilderness Alliance visited the UNM School of Law on October 8 and lectured on the efforts to recover endangered wolves. The endangered Mexican gray wolf is an emblem of the Southwest and the UNM mascot. The wolf was nearly wiped out in the early 1970s, prompting efforts to rebuild the population. Fewer than 85 Mexican gray wolves live in the wild.

Judy Calman moved to New Mexico in 2001, inspired by a life-long fascination with the West. After completing degrees in biology and philosophy, she has dedicated her career to environmental policy. She completed her law degree at the University of New Mexico, as well as a Masters in Environmental Law and Policy at the University of Vermont Law School.

Prof. Lee Paddock

Environmental and Energy Careers--The Washington, DC Market

Associate Dean Lee Paddock, Professor of Environmental Law Studies at George Washington University, visited the School of Law on February 25, to present a lecture on Washington, DC careers and Masters of Law programs. Dean Paddock shared his own career path and the many opportunities to practice in Washington, DC in private practice, government, and academia.

Prior to joining the faculty at GW Law, he was director of Environmental Legal Studies at Pace University Law School. He has also served as a senior consultant for the National Academy of Public Administration on several projects. In addition, he was an assistant attorney general with the Minnesota Attorney General’s office for 13 years.
Hawks Aloft

Raptor Conservation

Gail Garber, Hawks Aloft’s executive director, presented a lecture on "Raptor Conservation" at a Lunch & Learn on April 13 hosted by the Student Animal Legal Defense Fund, the Natural Resources and Environmental Law program and the Utton Center.

Julia Davis, Hawks Aloft Education and Outreach Coordinator, and Gail brought Shadow, a screech owl that has an elbow joint injury; Sunny, a prairie falcon missing a wing tip; and Aguilita, a Red-tailed Hawk who is blind in her left eye. Hawks Aloft cares for twenty non-releasable birds of prey. The education birds have a permanent disability that would prevent them from surviving at-large in nature, but they are provided with housing, a natural diet, and veterinary care so they can live out their life spans.

Hawks Aloft conducts nest surveys in the Rio Grande bosque, and raptor nests are monitored throughout the nesting season by staff and volunteers. Hawks Aloft and the U. S. Fish and Wildlife Service used the Migratory Bird Treaty Act of 1918 to protect the nesting season of birds in the Rio Grande bosque from April 15 until August 15 each year. Conservation, research, and education are the tools Hawks Aloft uses to preserve New Mexico’s birds and their habitats.
Utton Center Staff Activities

Adrian Oglesby was on teams that organized the following conferences:

- The New Mexico Bar Association Natural Resources, Energy, and Environmental Law Section’s New Mexico Mining Law Conference
- The Tamarisk Coalition's Advancing Riparian Restoration in the West conference
- Americans for a Clean Energy Grid Southwest Summit

Adrian also gave presentations at various schools and institutions:

- Congressman Lujan-Grisham's New Mexico Water Summit
- UNM School of Law's Water Law Class
- UNM School of Law's Wildlife Law Class
- UNM School of Architecture and Planning's Community, Water, and Food Systems in New Mexico Class
- NextGen Academy
- Albuquerque Chamber of Commerce's Leadership Conference Water and Energy Day
- Judicial Education Center's Water Law Seminar for Water Judges
- National Water Resources Association's Annual Conference
- Carpe Diem West’s Healthy Headwaters Leadership Conference
- New Mexico Water Dialogue’s Learning to Live with Less Water Conference
- Water Resources Research Institute’s Annual Conference
- New Mexico Legislature's Land Grant Committee

Darcy Bushnell, as the adjudications ombudsman continued to serve pro-se litigants by conducting Aamodt settlement community outreach. Darcy presented information on the Utton Center's Native American Water Rights Settlement Repository to the Southwest Tribal Fish and Wildlife Annual Conference and the Water Resources Research Institute Annual Conference. In addition, Darcy co-produced a Tribal Water Working Committee webinar on Tribal Water Codes and participated in the New Mexico Rural Water Association Annual Conference.
Hailing from Las Cruces, NM, Zach is the fourth generation in two families of chile farmers and grew up working in the chile fields of Hatch and the Mesilla Valley. He has been involved in all phases of chile production from planting and picking to processing and marketing of chile. Completing his third year of law school this spring, he previously graduated from the University of Arizona with a degree in economics.

In 2012, Zach served as research director for Congresswoman Michelle Lujan Grisham. He has worked with Technology Ventures Corporation and a team of engineers on start-up businesses. As a volunteer, he has tutored refugees in English as a Second Language.

The effects of drought in southeastern New Mexico and its devastating effects to agriculture compelled Zach to examine water resources. He has begun researching the costs and feasibility of desalination processes that could be utilized in New Mexico and the protection it could provide to farmers.

After law school, Zach would like to work closely with irrigation and conservancy districts and the farmers the districts serve.

Zach has made important contributions to the Utton Center during the two years he has worked for us. He has provided us with excellent research and writing products. Moreover, he has represented the Utton Center well as he conducted outreach with many water managers and users across the State. Zach’s work has included creating profiles of all the major agricultural water providers in New Mexico, investigations into the impacts of the doctrine of abandonment and forfeiture, drought impacts, water conservation laws, and shortage sharing agreements. Most recently Zach made important contributions to our work on water resilience and developed valuable educational materials for the National Young Farmers Coalition. We wish Zach all the best as he embarks on his legal career.
McCune Grant Awarded for Study of Water Management and Economic Development in Rural New Mexico

The Utton Center has a history of addressing New Mexico's water law and policy issues by initiating research, convening experts, and developing innovative solutions. The Center collaborates with multiple disciplines to address New Mexico's natural resource issues. Continuing these efforts, our next project will focus on the impact of water management on the economic development of rural New Mexico.

The condition of New Mexico's economy is dire. Our job growth has dropped from 15th to 48th in the nation. New Mexico took the same hits as the rest of the country during the recent recession, but our state is recovering very slowly despite real economic growth in most other states.

At the Utton Center we know secure water supplies are critical to economic growth. We also know rural communities often have the most vulnerable water supplies. A team of Utton Center staff and law students will research the issues, explore innovations, and work with experts to identify methods of improving rural water management that will support economic development in some of our most underserved communities.
In celebration of the Utton Center's 14th anniversary, we remembered the legacy of Professor Al Utton and his groundbreaking work in natural resources law. Over 120 friends and supporters gathered for a garden party at the Corrales home of Fred Harris and Marg Elliston.

The Center recognized the continuing support for its activities by Mary, John, and Jennifer Utton and their families. Marilyn O'Leary, who has served the Center as director and interim director was thanked for her commitment to the work of the Utton Center since its inception. Adrian Oglesby was welcomed as the new director.

Friends of Al and Mary Utton sipped margaritas and reminisced about Al to the music of Frank McCulloch and Melody Mock.
Utton Center Newsletter
Thank you for your interest and participation in the Utton Center's activities and efforts to improve the status of water resources in the State of New Mexico.