

Winter 2013

## Winter 2013 Utton Center Newsletter

Utton Center, University of New Mexico - School of Law

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The Utton Center



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### Note from the Director



It is with surprise and pleasure that I find myself writing for the Utton Center newsletter once again. Surprise, because when I left the Utton Center six years ago I did not expect to be back sitting at my desk and planning the future of the Center. Pleasure, because there is so much enthusiasm for the Utton Center's work and recognition of its place in the wide world of water policy.

I was asked to come back to the Center to do strategic planning, spearhead a budget expansion, and begin the search to hire a new full-time director. We have a good start with the planning process, we are exploring additional sources of funding, and we have begun the process to hire a new director.

A subcommittee of the Center's Advisory Board, along with the new dean of the law school, David Herring, joined me and members of the School of Law's natural resources faculty for a day-long planning session in September. We agreed on an updated mission statement, a list of desired qualities in a director, and the areas of work we will explore for expansion of the Center's mission.

The mission of the Center is *to inform decision making by promoting solutions to issues concerning the management of transboundary*

*resources. We do this through education, including service learning for law students; research and investigation; convening and facilitation; science-based dialogues with stakeholders and decision makers; and service to the public. The values that drive our vision are preventive diplomacy, impartiality, transparency, and interdisciplinary collaboration, with law as a catalyst.*

In brainstorming the qualities for the next director, we included boundary spanner, champion of our mission, entrepreneur and fundraiser, and people person, among others. The basic qualifications are a law degree, ten years of related professional or academic experience, and experience in water, environmental, or natural resources law and/or policy. We are looking for someone committed to the service projects that have made the Utton Center's work useful to the state of New Mexico.

Our budget expansion is important because the Center currently is operating with a skeleton staff. The director of the Ombudsman Program, Darcy Bushnell, is full-time, as is Laura Burns, the Program Coordinator. But I am  $\frac{1}{4}$  time and Adrian Oglesby is  $\frac{1}{2}$  time. It is obvious that we need a full time director, a full time staff attorney, and, to increase the scope of our work, another full-time attorney. We are grateful to the members of the New Mexico legislature for their support of our work in behalf of the state, especially our publication *Water Matters!* and the Ombudsman Program. We hope they continue their support of the Center.

In our planning meeting, we discussed the role of the Utton Center in the School of Law with Reed Benson, the chair of the Natural Resources and Environmental Law Program suggesting that the Center could be a "center of gravity" for support of its faculty, students, and the program as a whole. Examples are hiring students for Utton Center research and programs, working with the Natural Resources Journal staff, and helping students make connections that could enhance employment possibilities. In addition, the Utton Center and the Natural Resources and Environmental Law faculty work with the University of New Mexico Water Resources Program on main campus and its students--and that work will continue. We also discussed the possibility of expanding Utton Center research into the water-energy nexus and drought management through convening stakeholder meetings on managing water shortages and publishing materials on laws related to water conservation.

We hope to continue the Utton Center's service to the legislature and the people of the state through our publications and public outreach services, using our impartiality to support stakeholder discussions and our work with students.

--Marilyn C. O'Leary, Interim Director

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## Welcome to New School of Law Faculty

### Alex Ritchie Brings Energy Industry Expertise to Natural Resources and Environmental Law Program



The School of Law's newest member of the Natural Resources faculty, Assistant Professor Alex Ritchie, has stayed busy during his first year at the law school. Ritchie teaches oil and gas, property, and natural resources law, along with business courses.

In March, 2013, Professor Ritchie presented at the Rocky Mountain Mineral Law Foundation Special Institute on Air Quality in Denver, Colorado. Ritchie followed that up with a law review article, *Scattered and Dissonant: The Clean Air Act, Greenhouse Gases, and Implications for the Oil and Gas Industry*, that was published this fall in volume 43 of *Environmental Law*. The article focuses on the greenhouse gas regulation of the oil and gas industry and related climate change litigation, and provides practical advice for the oil and gas industry as to its greenhouse gas compliance obligations. The article also discusses the anticipated expansion of the regulatory regime under the Clean Air Act, including potential implications of new Clean Air Act coal-fired power plant emissions regulations on the natural gas industry.

In May, 2013, Professor Ritchie co-chaired the Rocky Mountain Mineral Law Foundation conference on Oil and Gas Service Agreements in Santa Fe, New Mexico. The conference, which was attended by almost 300 lawyers and professionals, focused on commercial and other agreements common in the oil and gas industry relating to goods, services, and people. Professor Ritchie also presented at the conference on the law applicable to contract boilerplate provisions, and practical drafting and negotiating skills relating to such provisions.

In January, 2013, the *Albuquerque Journal* published an op-ed piece authored by Ritchie, entitled "Fracking Surrounded by Misinformation." Ritchie has authored two other law review articles that have been accepted for publication in 2014.



### Jeanette Wolfley Teaching Federal Indian Law and Tribal Natural and Cultural



## Resources

Jeanette Wolfley, enrolled in the Shoshone-Bannock Tribes, joined the University of New Mexico Law School in fall 2013. She teaches federal Indian law, Indian water rights, federal jurisdiction, and Tribal natural and cultural resources courses.

Prior to joining the School of Law faculty, Professor Wolfley practiced law for over 30 years representing exclusively Tribal clients' interests in a wide variety of matters including, federal Indian law issues, Tribal law, water law adjudications and implementations of water settlement agreements, environmental and land use regulation, hunting and fishing treaty rights, gaming law, taxation, employment rights, and natural-cultural resource protection.

She has a wealth of litigation experience before federal, Tribal, and state courts, legislative work before Congress, and state legislatures, and administrative law practice before federal administrative agencies. Wolfley served as General Counsel for the Shoshone-Bannock Tribes from 1988 to 1996 before serving as special counsel. Prior to her general counsel work she worked with the Native American Rights Fund in Boulder, Colorado where she served as Staff Attorney and Deputy Director for six years, 1982-1988. Just prior to joining the law school she was in private practice representing tribal clients, 1996-2013.

Her academic interests include a variety of Indian law issues, Indian voting rights and natural and cultural resource protection matters.

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## New to the Utton Center



### Adrian Oglesby

As Senior Staff Attorney, Adrian identifies and develops

meaningful legal and policy solutions to the real and immediate natural resource challenges facing New Mexico, based on an expert understanding of New Mexico's historic and current natural resource management practices.

Before earning a degree from the University of New Mexico School of

Law, Adrian Oglesby managed environmental cleanup projects. He has since provided legal counsel to tribes, farmers, and NGO's on water and environmental issues; represented the New Mexico Interstate Stream Commission on the Pecos River; and, established and managed the Living Rivers Program for The Nature Conservancy in New Mexico. He currently represents Bernalillo County on the Board of Directors of the Middle Rio Grande Conservancy District and enjoys his private law practice in Albuquerque.



### **Laura Burns**

Our new program coordinator is Laura Burns, a graduate of Vanderbilt University, and veteran of a ten-year career as a legal assistant in Houston. She has served as a resource development director for several not-for-profit organizations and as a freelance copyeditor. Laura supports stream conservation and restoration initiatives and has promoted sustainable communities in Montana and New Mexico. An avid flyfisherman, she lives in Corrales near the bosque of the Rio Grande.

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**Reed D. Benson, Keleher & McLeod Professor and chair of the Natural Resources and Environmental Law Program** has published "Avoiding Jeopardy, Without the Questions: Recovery Implementation Programs for Endangered Species in Western River Basins," in 2 MICHIGAN JOURNAL OF ENVIRONMENTAL AND ADMINISTRATIVE LAW 473 (2013). His short article, "Environmental Issues in the Allocation and Management of Western Interstate Rivers," is forthcoming in a special symposium issue of the INDIANA INTERNATIONAL & COMPARATIVE LAW REVIEW. Reed and his co-authors are pleased that the new and extensively revised 7<sup>th</sup> edition of the Water Resource Management casebook (Foundation Press) will soon be in print. Reed spoke on the potential for a stronger federal role in water management at the "Transformational Solutions for Water in the West Workshop," organized by Sandia National Labs and the Atlantic Council; about water and climate change in the West at the Natural Resources Law Teachers Institute in Flagstaff, AZ; and on New Mexico water law at a New Mexico State Bar CLE program on land use law. Reed has also begun experimenting with blogging, recently launching a new blog on western water law and policy at [www.westernriverlaw.com](http://www.westernriverlaw.com).



### **Darcy Bushnell Presents at Tribal Water Conference**



Darcy Bushnell, (89), director of the Joe M Stell Water Ombudsman Program at the Utton Center, was an invited member of the faculty at the two Tribal water conferences in 2013: the Western States Water Council & Native American Rights Fund Symposium on the Settlement of Indian Reserved Water Rights Claims in Santa Fe, New Mexico and the National Congress of American Indians' 70<sup>th</sup> Annual Convention and Marketplace in Tulsa, Oklahoma.

Bushnell introduced to the attendees the national Native American Water Rights Settlement repository (NAWRS) which was launched in January of 2013. The repository includes documents from 30 tribal water rights settlements and includes a map tool to facilitate searching. The team working on the site included the American Indian Law Center, the University of Idaho College of Law and Waters of the West Program, the University of New Mexico's Centennial Library of Science and Engineering, Earth Data Analysis Center and Utton Center of the School of Law at UNM. The project was funded by grants from the U.S. Bureau of Indian Affairs and the Rocky Mountain Mineral Law Foundation. Its supporters include the Native American Rights Fund, the National Congress of American Indians and the Western States Water Council. In 2014, the Utton Center will be adding more documents and incorporating an appropriations tracker being developed by the University of Idaho College of Law and Waters of the West Program.

The NAWRS Repository may be accessed at:  
<http://repository.nawrs.net> and <http://nawrs.net>

## **A Water Rights Manual for Mutual Domestic Water Consumers Associations**

The Utton Center is pleased to announce the publication of the "Water Rights Manual for Mutual Domestic Water Consumers Associations." Written by law students Zackary Carpenter & Gregory Chakalian, class of 2013, the manual has been updated and edited by Darcy S. Bushnell, director of the Joe M Stell Water Ombudsman Program. The manual provides information and procedural guidance to MDWCAs in the acquisition and care of water rights in New Mexico. It has undergone extensive review by the Office of the State Engineer, organizations which provide services to Mutual Domestic and water attorneys. The manual was made possible by a grant from the McCune Charitable Foundation.







## **Alumni Spotlight Bidtah N. Becker**

Member, Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development

Bidtah N. Becker (Navajo) serves as Assistant Attorney General for the Natural Resources Unit of the Navajo Nation Department of Justice. Previously she was a member of the Water Rights Unit of the Navajo Nation Department of Justice from 2004 to 2012 and the Human Services and Government Unit from 2002 to 2004. In 2012, President Obama appointed Becker to the Board of Trustees of the Institute of American Indian Arts.

Earlier in her career, Becker taught government courses at the Santa Fe Indian School and was also a Chaplain in Residence at the Georgetown University Campus Ministry. She currently serves on the Board of the Southwestern Association for Indian Arts, the Board of the Tribal In-House Counsel Association, and the University of New Mexico School of Law Alumni Board of Directors.

Becker earned a BSFS from the Georgetown University School of Foreign Service and a JD from the University of New Mexico School of Law in 2000. She is married to Paul Spruhan ('00) and is the mother of Bahe and Tazbah.

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## **Dave Nezzie Environmental Law Society**

Environmental Law Society President Dave Nezzie (2L), is the first Native American Student to complete the NA-PLUS (Native American Pre-Law Scholars Undergraduate Program) and PLSI (Pre-Law Summer Institute) programs held at the University of New Mexico.



Dave releasing a Cooper's Hawk.

Prior to law school Nezzie received recognition for his achievements in hospitality, earning distinguished accolades such as "Food and Beverage Employee of the Year for the State of Arizona" from the Arizona Hotel and Lodging Association for his role at KAI, a restaurant which incorporates the essence of the Pima and Maricopa Tribes into its cuisine. While working at the state's only 5-star, 5-diamond restaurant,



Nezzie earned concurrent bachelor degrees in Anthropology and American Indian Studies from ASU.



Dave Nezzie at ASU graduation.

Nezzie is of the Coyote Pass clan from the Navajo Nation, husband, and a father of two. He enjoys outdoor activities and quality time with his family. His recent internship with New Mexico's Department of Cultural Affairs and Department of Tourism reinforced his decision to pursue legal certification in Natural Resources and Indian Law.

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## Student Spotlight: Ed Merta



Ed Merta is a third-year law student at the University of New Mexico, specializing in natural resources and environmental law. Ed has served as co-Vice President of the Environmental Law Society and secretary of the Middle Rio Grande Water Assembly. He currently works as a research assistant for the law school's natural resources program and for Professor Eileen Gauna, an expert in environmental justice.

In the summer of 2013 Ed was a law clerk for Western Resources Advocates, a nonprofit public interest law firm dedicated to natural resources conservation and environmental protection in the interior West. Ed has written an article on electric transmission lines and climate change adaptation for the natural resources, energy, and environment newsletter of the New Mexico state bar. Ed is also researching and writing an article on priority administration of water rights for *Water Matters!*, an Utton Center publication. Ed is a contributor on climate change issues to the *New Mexico Mercury*, a local online journal of politics and culture.

Following graduation in May 2014, Ed hopes to work on climate change and energy law and policy for a nonprofit or government agency. Ed enjoys, *inter alia*, movies, baseball, train rides, creative writing, board games, hiking, riding a bike, *Star Trek*, coffee, and breakfast burritos.

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## New Mexico Indian Water Rights Settlements

In October of 2013, Darcy Bushnell facilitated two public meetings to launch *the inter se* phase of the Taos Pueblo tribal water rights in *State of New Mexico v. Abeyta* water rights adjudication. The *inter se* portion of an adjudication is the time when claimants in a water adjudication can examine and object to any other water right in the adjudication. About 250 community members attended the meetings to learn about the settlement and what it means for their communities. In the Spring of 2014, Bushnell will organize and hold public meetings, workshops, and office hours in the Rio Pojoaque stream system basin to launch the *inter se* phase of adjudication of water rights for the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque in the *State of New Mexico v. Aamodt* litigation.

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### 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. For further information, please see our website <http://uttoncenter.unm.edu/>. If you have ideas, requests or suggestions for our next newsletter, please contact the Utton Center at the information listed above. You are a valued resource to the center and our community. Thank you!