

Fall 2012

## Fall 2012 Utton Center Newsletter

Utton Center, University of New Mexico - School of Law

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UNM SCHOOL of LAW

The Utton Center



### Note from the Director

I've been thinking a lot about climate change this summer, as have most New Mexicans, I suspect. There have been several recent conferences on the topic, and it has been a recurring topic of the journal articles that (electronically) cross my desk.

It is clear that the planet is experiencing change and that these changes will intensify in the future, affecting all aspects of our natural environment. The future of the legal profession also is changing, as demonstrated by unemployment among lawyers and the national glut of lawyers. (UNM graduates, happily, seem to be better placed than many others.) Further, our particular area of emphasis, natural resources and environmental law, is changing as well. For environmental and natural resources faculty, the challenge is to teach principles and encourage analysis that will endure in the face of today's vigorous policy debates-which may well result in alterations within our controlling statutory system. While some of these laws may be rolled back, I think that over time we will see a shift toward new models based on sustainability of natural systems. In any event, what we find in our textbooks will undoubtedly change over the years our students spend in practice. Our teaching needs to reflect a balance between teaching "the Law" and preparing future lawyers for change.

A research and service institute, such as the Utton Center, should ensure that the university is not only responsive to changes, but a leader in moving the world toward sustainability. I'm acutely aware that our endeavors might be labeled "academic" or of the "ivory tower." But universities in the United States continue to be models of excellence worldwide because of the free inquiry we protect. The purpose of free inquiry is not to indulge the whims of faculty members, but to foster the widest range of activities that may bear fruit for our society.

Your support for the academic endeavor is crucial and appreciated. Your candid feedback also is appreciated, as you reflect on the academic and research activities highlighted here.

**Professor Denise Fort**  
**Director,**  
**Utton Center**

always available at [fortde@law.unm.edu](mailto:fortde@law.unm.edu)

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## Professor Reed Benson Considers 'Double Whammy' of Climate Change and Management



Professor Reed Benson has an article on federal water law and climate change in an upcoming issue of Ecology Law Quarterly. Titled "Federal Water Law and the 'Double Whammy': How the Bureau of Reclamation Can Help the West Adapt to Drought and Climate Change," the article considers the role the U.S. Bureau of Reclamation has to play in managing water supplies in times of drought and climate change-and whether the federal water management agency does indeed have the authority to help western water users adapt to changing water supplies.



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## 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 inaugural CLE International Tribal Water Law Conference in Las Vegas, Nev.

She spoke on the importance of community outreach in Indian water rights settlements. Bushnell also introduced to the attendees the national Native American Water Rights Settlement e-repository (NAWRS) being constructed by the team of the American Indian Law Center, the University of Idaho College of Law and Waters of the West Program, University of New Mexico Centennial Library of Science and Engineering, Earth Data Analysis Center at UNM and the Stell Ombudsman Program of the Utton Center.

The June conference was presented by CLE International.

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## Professor Gauna Speaks on Environmental Justice and Water



Professor Eileen Gauna spoke at CLE International's New Mexico Water Law Conference in Santa Fe this week. Along with Eric Jantz (New Mexico Environmental Law Center) and Felicia Orth (New Mexico Environment Department Hearing Officer), Gauna is speaking about "Environmental Justice: What it Means in the World of Water."

Gauna is also on the steering committee for a conference on September 27-30, sponsored by the Advanced Science and Technology Adjudication Resource Center, Inc. It is the National Judges' Science School "Training Judges for Management of Complex Cases Involving Environmental Hazards." The program will be on ionizing radiation.

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## ELS Update: Law Students Pitch in for the Rio Grande

By Michelle Miano

In August, a group of students from UNM School of Law participated in the Great Bosque River Clean-Up at the Rio Bravo Picnic Area in Albuquerque. The event was organized by the Environmental Law Society and the City of Albuquerque Open Space Division. Eighteen students spent several hours picking up cans, plastic, styrofoam and other litter around the picnic area, the bike path and the Bosque forest along the Rio Grande. Many thanks to everyone who attended and helped make a difference!

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## NRJ Has New Board, Updated Database of Articles

By Zoe Lees and Joshua Curtis, Editors in Chief, Natural Resources Journal

The Natural Resources Journal (NRJ) has served an international readership for 53 years, and we are thrilled to welcome the incoming board and staff members who will make the next year's publications possible. The experience and passion brought to the table is truly impressive. We are excited to publish articles containing original research, important policy considerations, and relevant topics that address current problems.



Current and past issues of NRJ are online at <http://lawschool.unm.edu/nrj/>. This free database of articles is provided by the NRJ to practitioners, researchers, and students alike. This service aligns with our goal of providing research and policy considerations to aid the international community in addressing important issues in the natural resources field.

We invite you to visit the [NRJ's website](#) and to watch for Volume 53, which this board has worked so hard in publishing. We believe you will be impressed. Thank you for your continued readership and support.

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## Professor Denise Fort Provides Testimony for Senate Field Hearing

In August, Sen. Jeff Bingaman, D-NM, held a field hearing of the U.S. Senate Committee on Energy and Natural Resources. Bingaman convened the hearing over the impacts of climate change in the Inter-mountain West.

Fort directed her comments toward agriculture and ecosystems, pointing out that the term "drought" has become a misnomer for the change in climate the Southwest is experiencing.

"Thus to use the term 'drought' or 'variability' is subtly misleading, because the salient question is how a diminished and altered supply of water will be managed," testified Fort.

"If the operating assumption is that there will be a return to 'average' flows, for example, one makes different decisions than if one acknowledges that the average is changing. The implications of a changed climate should be taken into account in federal farm policy and in federal water policy."

To read Fort's testimony in its entirety, visit <http://ssrn.com/author=623383>

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## Alumni Spotlight: Amy Haas

When Amy Haas ('00) entered the University of New Mexico School of Law, she had no idea she would become one of the state's top water attorneys-or even that she would study water and natural resources.

"I went to law school thinking I'd become a civil rights attorney," says Haas. Recalling that her first-year property law course was taught by G. Emlen Hall, she remembered that "he managed to inject water cases and water issues into that first year course, and I was just fascinated." Then, she took a course on water law with Charles DuMars.

"I became so interested in the interdisciplinary nature of water and water law," she says. "The fact that it combines law and legal principles, science, history, anthropology-that really excited me."

Following graduation, Haas spent a few years in private practice, then began working for the State of New Mexico in 2005. She worked as the Interstate Stream Commission's (ISC) Middle Rio Grande Bureau attorney until 2009, when she was promoted to general counsel.

New Mexico is party to eight interstate stream compacts, which means her office is busy dealing with the state's obligations and entitlements under these compacts. The commission also supports the federal government in its Endangered Species Act compliance requirements while ensuring protection of New Mexico's waters and water users pursuant to its mandate. In addition, the ISC works on Indian water rights settlements and is involved in both the state and federal legislative processes.

"It's a very interesting, dynamic job," says Haas, "and I feel grateful to have it." She also recognizes how lucky she is given the current job market. "It's a difficult time, and there are fewer opportunities available to some of the law students and recent grads," she says. "But I encourage graduates to keep pursuing the possibilities of practicing in this area, which I think is really important."

In her particular position with the state, the drought has created a lot of legal work.

"There are ways to think creatively about what you might be able to do," she says.

"Certainly, we live in a very arid state, there are a lot of water issues that are on the forefront, and there might be opportunities away and apart from a purely legal job."

During the interview, she laughs and asks if she's talking too much about water: "I could talk for hours about water," she says. "A lot of us have passion for water, we call ourselves water nerds and could talk about it endlessly."

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## Student Spotlight: Justin Nyberg

Environmental Law Society Co-President Justin Nyberg came to UNM School of Law after a ten year career as a journalist. After completing his undergraduate degree at Princeton University in 2001, Nyberg worked as a reporter for the San Francisco Examiner and its affiliate newspapers, and spent six years as an editor for Outside magazine based in Santa Fe.



Now in his second year at UNM, Nyberg is a staff member of the Natural Resources Journal and is pursuing a certificate of concentration in Natural Resources. He is currently an extern at the Department of the Interior Regional Office of the Solicitor in Albuquerque, and recently finished an externship in the chambers of Justice Charles Daniels at the New Mexico Supreme Court.

In his free time, Nyberg is a dedicated runner and outdoor enthusiast. He and his fiancé, Leah Gallant ('14), also lay claim to the two sweetest dogs in New Mexico.

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## Student Spotlight: Michelle Miano

Second year law student Michelle Miano is the new co-president of the Environmental Law Society at the UNM School of Law. She looks forward to working with the Utton Center and other groups to further the Society's mission to promote awareness of environmental, natural and cultural resource issues at the law school.

Miano moved to New Mexico shortly after earning her B.A. in the Writing Seminars at Johns Hopkins University. This past summer she received a fellowship from the Association of Public Interest Law to work with Earthworks' Oil and Gas Accountability Project on hydraulic fracturing issues.

Before entering the law school, she worked as a development officer at Audubon New Mexico in Santa Fe.

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## Professor Denise Fort Discusses Climate and Water at Workshops

Professor Denise Fort made a presentation at the annual meeting of the Universities Council on Water Resources/National Institutes for Water Resources in July. The title of her talk was, "Climate Change and Water in New Mexico: Governance Structures for a New Era."

The meeting of university-based water experts took place in Santa Fe. The title of this year's conference was, Managing Water, Energy & Food in an Uncertain World.

In July, Fort also participated in a panel discussion at the 37th Annual Natural Hazards Research and Applications Workshop in Broomfield, Colo. The workshop was presented by the Natural Hazards Center at the University of Colorado.

The title of Fort's panel was "Emerging Critical Water Resource Issues." The panel consisted of seasoned observers of water management, including Professor Gerry Galloway (University of Maryland), Marcus Moench (Institute for Social and Environmental Transition), and Professor Chuck Howe (University of Colorado - Boulder). Audience members, however, were primarily from the community of disaster professionals-and it was evident that there is a disconnect between how we think about long-term water management policies and the problems we label "emergencies," such as flooding.

In August, Fort spoke at the 57th annual New Mexico Water Conference. This year's conference was titled "Hard Choices: Adapting Policy and Management to Water Scarcity" and is archived at: <http://2012.wrri.nmsu.edu/webcast>

She was invited by Senator Udall's staff to present an environmental perspective on water scarcity. During her talk, she emphasized the need for federal support for river restoration and for limiting the federal role in funding large water projects.

"While seemingly inconsistent, river restoration provides a public good, and is especially appropriate because New Mexico rivers have been affected by federal construction projects," she said. "Water supply projects, in contrast, have private beneficiaries. Requiring project beneficiaries to pay reins in some of the more extravagant and unnecessary water projects by returning responsibility to a local level."

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## Professor Cosens Co-Edits New Book on Winters Centennial

In June, the University of New Mexico Press published "The Future of Indian and Federal Reserved Water Rights: The Winters Centennial." The book is co-edited by Professors Barbara Cosens (University of Idaho College of Law and former UNM SOL visiting scholar) and Judith V. Royster (University of Tulsa College of Law).



Within the book, the two have collected essays and remarks by lawyers, historians, and tribal leaders who explore the Winters Doctrine, its impacts, and legacies-and included proceedings from the 2008 Winters Centennial Conference held at the Pueblo of Santa Ana's Tamaya Resort. Contributors include Professor Reed Benson, G. Emlen Hall, Patricia Limerick, John Leshy, Barbara Cosens, David Getches, and Regis Pecos.

The Utton Center was one of the co-sponsors of the Winters Centennial Conference in 2008.

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## Fort Pursue Interests Across Borders

Professor Denise Fort spent three days in late June at a workshop in Sydney, Australia. The discussions centered on innovations in managing groundwater and the relationship between ground and surface water.

"Australia provides great examples of how groundwater resources can be better managed to reduce the effects on surface waters and to reduce the adverse ecological effects of groundwater pumping," said Fort.

The workshop was part of an ongoing collaboration between the University of Sydney's United States Studies Centre and the Water in the West program at Stanford University's Woods Institute.

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## Online: Law Library's Latest Acquisitions

To view a list of the Law Library's recent titles that may be of greatest interest to Utton Center faculty and students, visit:

<http://uttoncenter.unm.edu/newsletter/Sep12/LawLibraryNewList.pdf>

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## UNM School of Law Events

The Natural Resources Speaker Series presents Gary King, New Mexico Attorney General. King will be speaking on September 12, from 5:15-7:15 at the UNM School of Law (Room 2402).

On October 17, the series will present Cindy Murray of PNM Resources and environmental attorney Laura Sanchez. Murray and Sanchez will be speaking on Alternative Energy Sources from 5:15-7:15 at the UNM School of Law (Room 2402).

On October 25, The Environmental Law Society of the Law School will be holding its annual mixer for natural resources and environmental legal community and law students. It will be held on the Hart Wing Patio from 5:00 to 7:00 pm. For more information:

<https://www.facebook.com/pages/Environmental-Law-Society-UNM-School-of-Law/290490237675438>

On November 14, the series will present James Gustave Speth, dean of Vermont Law School.

Speth will speaking about "America the Possible" from 4-6 at the UNM School of Law (Room 2402).

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## Upcoming Events

September 13-16: The Gila Conservation Coalition is hosting its 8th annual Gila River Festival in Silver City. For more information:

<http://www.gilaconservation.org/wp/?p=104>

September: The New Mexico Environment Department's Surface Water Quality Bureau is hosting its 2012 New Mexico Watershed Forum Workshops throughout the state:

- Santa Fe - Sept. 21st and 22nd: Caring for Arroyos in your Neighborhood. Register with Felicity Broennan at (505) 820-1696 or [felicity@santafewatershed.org](mailto:felicity@santafewatershed.org) or online: [www.santafewatershed.org](http://www.santafewatershed.org).
- Pecos - Sept. 26th & 27th: A Changing Landscape: The Pecos Watershed and its Future. Register with Lexy St. James at (505) 757-3600 or e-mail her at: [upwa@pecoswatershed.org](mailto:upwa@pecoswatershed.org).
- Las Vegas - Sept. 28th & 29th: Preparing for and Adapting to Drought in Northern New Mexico. Register with Molly Walton at (505) 820-2544, ext. 6# or e-mail her at: [mwalton@quiviracoalition.org](mailto:mwalton@quiviracoalition.org).

For more information visit [www.nmenv.state.nm.us/swqb/wps/2012WatershedForum](http://www.nmenv.state.nm.us/swqb/wps/2012WatershedForum)

September 22: Riparian Restoration workshop FREE Volunteer Workshop on Mesteño Draw near Mountainair, N.M., with riparian restoration specialist, Bill Zeedyk. For more information and to register contact Joan Bybee at [joan.bybee@gmail.com](mailto:joan.bybee@gmail.com).

September 28-29: The Quivira Coalition, Ecotone, and the New Mexico Environment Department, Surface Water Quality Bureau, are offering a free two-day workshop with the New Mexico Watershed Forum. Titled "Preparing for and Adapting to Drought in Northern New Mexico," the workshop will offer information on adaptation to rapid changes in climate, practical land stewardship solutions, available funding sources and available technical resources. The workshop will include two afternoon field trips and time for group discussions. Participation is limited to 40 people. Location: Juniper Hill Center for Sustainable Agriculture in Las Vegas, New Mexico. Register at: [http://quiviracoalition.org/Land\\_Water\\_Program/Restoration\\_Workshops/index.html](http://quiviracoalition.org/Land_Water_Program/Restoration_Workshops/index.html)

September 29: Audubon New Mexico is hosting "Southwest Women in Conservation 2012." The event will be held from 10 am - 1 pm at the Randall Davey Audubon Center and Sanctuary, Santa Fe, New Mexico. For more information contact Maryam Miller at [mmiller@audubon.org](mailto:mmiller@audubon.org).

October 2-5: The New Mexico Rural Water Association's Fall Conference and Operator Boot Camp will be held in Las Cruces. For more information: <http://www.nmrwa.org/conference.php>

October 6-7: the Ampersand Sustainable Learning Center in Cerrillos is hosting a workshop, "Watershed Restoration: The Cutting Edge. Catching, Sinking, Storing and Using Water Where it Falls," with Brad Lancaster, Bill Zeedyk, Craig Sponholtz, Steve Carson, and Amanda Bramble. To register, visit [www.ampersandproject.org](http://www.ampersandproject.org).

October 22-24: Rainwater Harvesting for Wildlife. Hands-on training in building rainwater harvesting catchment systems for wildlife, livestock and farming. Hosted by the Pueblo of Sandia, New Mexico, and the U.S. Fish and Wildlife Service Partners for Fish and Wildlife Program, and Billy Kniffen. Location: Sandia Pueblo, just north of Albuquerque, N.M. The registration fee is \$125.00 and includes lunches, snacks, drinks and educational materials. For more information and to register, contact Maceo Timothy Smith [tsmith@sandiapueblo.nsn.us](mailto:tsmith@sandiapueblo.nsn.us).



November 15-16: CLE International's Western Water Law Conference will be held in Las Vegas, NV, . For more information:  
[http://www.cle.com/product.php?proid=1359&src=Featured&page=Western\\_Water\\_Law](http://www.cle.com/product.php?proid=1359&src=Featured&page=Western_Water_Law)

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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!

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