Fifth Annual Sustainability Conference of American Legal Educators

Friday, May 10, 2019
Beus Center for Law and Society | Phoenix, AZ

Arizona State University
Law and Sustainability
The Program on Law and Sustainability at Arizona State University’s Sandra Day O’Connor College of Law is delighted to welcome you to the Fourth Annual Sustainability Conference of American Legal Educators.

This ambitious conference is our signature contribution to the worldwide sustainability movement—a movement whose influence continues to expand throughout legal academia. As we’re all aware, technological advancements over the past century have dramatically improved daily life for countless people across the world. Unfortunately, many of these modern conveniences also deplete or alter the planet’s natural resources in ways that could significantly harm future generations. Transitioning cities, nations, and the world toward more environmentally sustainable living has thus emerged as one of humankind’s greatest twenty-first century challenges.

Billions of dollars are invested annually into scientific and engineering research aimed at improving the environmental sustainability of modern economies. In contrast, far fewer resources are devoted to the development of creative policy strategies and legal structures tailored to support the valuable sustainability innovations emerging from this global research effort. This conference seeks to help address that imbalance by annually bringing together many of the nation’s foremost legal scholars researching in sustainability-related areas. By providing a forum for legal academics to develop new collaborations and share ideas face-to-face, the conference aims to engender greater scholarly discourse on these imperative issues and to ultimately move the needle in humankind’s relentless pursuit of a more ecologically sustainable society.

Keynote Speaker

Michael B. Gerrard
Andrew Sabin Professor of Professional Practice at Columbia Law School

Michael teaches courses on environmental law, climate change law, and energy regulation, and founded and directs the Sabin Center for Climate Change Law. He also chaired the faculty of Columbia University’s Earth Institute from 2015 to 2018. From 1979 through 2008, he practiced environmental law in New York full time, most recently as partner in charge of the New York office of Arnold & Porter.

Michael has chaired the environmental law sections of the American Bar Association and the New York State Bar Association. He is author or editor of 13 books, most recently Legal Pathways to Deep Decarbonization in the United States (2019, co-ed. with John Dernbach) and Climate Engineering and the Law: Regulation and Liability for Solar Radiation Management and Carbon Dioxide Removal (2018, co-ed. with Tracy Hester).
Speakers

Todd Aagaard  
Villanova University Charles Widger School of Law

Karen Bradshaw  
Arizona State University

Jane Maslow Cohen  
University of Texas School of Law

Amy Cohen  
The Ohio State University Moritz College of Law

John Dernbach  
Widener University Commonwealth Law School

K.K. Duvivier  
University of Denver Sturm College of Law

Joel Eisen  
University of Richmond School of Law

Ann Eisenberg  
University of South Carolina School of Law

Steven Ferrey  
Suffolk University Law School

Sarah Fox  
Northern Illinois University College of Law

Jill Fraley  
Washington & Lee University School of Law

Andrea Freeman  
University of Hawai‘i William S. Richardson School of Law

Michael Gerrard  
Columbia University Law School

Carmen G. Gonzalez  
Seattle University School of Law

Jacqueline Hand  
University of Detroit Mercy School of Law

Ernesto Hernandez-Lopez  
Chapman University Dale E. Fowler School of Law

Keith Hirokawa  
Albany Law School

Cameron Holley  
University of New South Wales Law School

Shi-Ling Hsu  
Florida State University College of Law

Bruce Huber  
Notre Dame Law School

Blake Hudson  
University of Houston Law Center

Alice Kaswan  
University of San Francisco School of Law

Elizabeth Kronk Warner  
University of Kansas School of Law

Rhett Larson  
Arizona State University

Alexander Lemann  
Marquette University Law School

Al Lin  
University of California Davis School of Law

Anthony Moffa  
University of Maine School of Law

Jonas Monast  
University of North Carolina School of Law

Bronwen Morgan  
University of New South Wales Law School

Felix Mormann  
Texas A&M University School of Law

Jonathan R. Nash  
Emory University School of Law

John Nolon  
Pace University Elisabeth Haub School of Law

Jessica Owley  
SUNY Buffalo Law School

Gabriel Pacyniak  
University of New Mexico

Lee Paddock  
The George Washington University Law School

Justin Pidot  
University of Denver Sturm College of Law

Margherita Pieraccini  
University of Bristol Law School

Margot J. Pollans  
Pace University Elisabeth Haub School of Law

Lisa Pruitt  
University of California Davis School of Law

Edward Richards  
Louisiana State University Paul M. Hebert Law Center

Kalyani Robbins  
Florida International University College of Law

Jonathan Rosenbloom  
Drake University School of Law

Erin Ryan  
Florida State University College of Law

Sarah Schindler  
University of Maine School of Law

Jessica Shoemaker  
University of Nebraska College of Law

Nancy Shurtz  
University of Oregon School of Law

Stephanie M. Stern  
Chicago Kent College of Law

Lisa Grow Sun  
Brigham Young University J. Reuben Clark Law School

Barton H. Thompson, Jr.  
Stanford Law School

Kristen van de Biezenbos  
University of Calgary Faculty of Law

William Weeks  
University of Houston Law Center

Michael Wolf  
University of Florida Levin College of Law

Sandra Zellmer  
University of Montana School of Law
### Schedule

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<th>Time</th>
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| 8:00–8:30 a.m. | **Check-in and Light Breakfast**  
*W. P. Carey Foundation Armstrong Great Hall* |
| 8:30 a.m.     | **Introductions and Morrison Laureate Address**  
*W. P. Carey Foundation Armstrong Great Hall*  
Jessica Owley, Federico Cheever (deceased), Adena Rissman, Rebecca Shaw, Buzz Thompson & Bill Weeks  
| 9:30–10:50 a.m. | **Break-out Session #1**  
Panel: “Rural Resilience”  
*Room 150*  
Ann Eisenberg, University of South Carolina School of Law  
Blake Hudson, University of Houston Law School  
Lisa Pruitt, University of California-Davis School of Law  
Jessica Shoemaker, University of Nebraska College of Law  
**Freestanding Presentations: Sustainability and Environmental Harms**  
*Room 250*  
Lisa Sun, Brigham Young University J. Reuben Clark Law School, “Just Environmentalism”  
Sandra Zellmer, University of Montana Alexander Blewett III School of Law, “Averting Mass Extinctions through Connectivity”  
Kalyani Robbins, Florida International University College of Law, “The Private Public Trust”  
|             | **Freestanding Presentations: Sustainability and Climate Change**  
*Room 240*  
Michael Wolf, University of Florida Levin College of Law, “Guerilla Tactics for the War on Climate Change”  
Nancy Shurtz, University of Oregon School of Law, “Self-Motivated Ecocentrism: The Modern Institutional Carbon Tax”  
Gabriel Pacyniak, University of New Mexico School of Law, “The Green Coop Revolt: How Mountain West Rural Electricity Distribution Coops Are Confronting Their G&T to Accelerate the Shift to Clean Energy” |
|             | **Panel: “Energy Justice and the Green Energy Transition”**  
*Room 140*  
Elizabeth Kronk Warner, University of Kansas School of Law  
Carmen Gonzalez, Seattle University School of Law  
Alice Kaswan, University of San Francisco School of Law |
11:00 a.m.–12:20 p.m. Break-out Session #2

Panel: “Sustainability and the Production of Food”
Room 240
Bronwen Morgan, University of New South Wales Law School
Amy Cohen, The Ohio State University Moritz College of Law
Margherita Pieraccini, University of Bristol Law School
Rhett Larson, Arizona State University Sandra Day O’Connor College of Law

Freestanding Presentations: Sustainability and Land Development
Room 150
Alexander Lemann, Marquette University Law School, “Assumption of Flood Risk”
John Nolon, Pace University Elisabeth Haub School of Law, “Low Carbon Land Use”
Keith Hirokawa, Albany Law School, “Climate Disruption and Ecosystem Tradeoffs”
Edward Richards, Louisiana State University Paul M. Hebert Law Center, “The Role of New Towns in the Sustainable Development of Coastal Communities Subject to Catastrophic Sea Level Rise and Storm Risk”

Panel: “Articles to Action: Making a Difference in Sustainability Law”
Room 250
KK DuVivier, University of Denver Sturm College of Law
John Dernbach, Widener University Commonwealth Law School
Steven Ferrey, Suffolk University Law School
Lee Paddock, George Washington University Law School

12:30–1:30 p.m. Keynote Speaker: Michael Gerrard, Columbia University Law School, “Taking 1.5 Degrees Seriously: Tradeoffs and Triage”
W. P. Carey Foundation Armstrong Great Hall

1:40–3:00 p.m. Break-out Session #3

Panel: “Homespun: Weaving Coherent Principles of Design for Equitably-Sustainable Communities”
Room 150
Karen Bradshaw, Arizona State University Sandra Day O’Connor College of Law
Jane M. Cohen, University of Texas School of Law
Margaret J. Pollans, Pace University Elisabeth Haub School of Law
Jonathan Rosenbloom, Drake University Law School

Panel: “Sustainable Food Systems”
Room 240
Andrea Freeman, University of Hawai‘i William S. Richardson School of Law
Jacqueline Hand, University of Detroit Mercy School of Law
Ernesto Hernandez-Lopez, Chapman University Dale E. Fowler School of Law
Panel: “Conserving Federal Lands in the Current (Political) Climate”

Room 250

Anthony Moffa, University of Maine School of Law
Justin Pidot, University of Denver Sturm College of Law
Sarah Schindler, University of Maine School of Law

3:10–4:30 p.m.  Break-out Session #4

Freestanding Presentations: Sustainability and Legal Governance Structures

Room 150

Todd Aagard, Villanova University Charles Widger School of Law, “The Challenges of Compliance Markets”
Sarah Fox, Northern Illinois University College of Law, “Environmental Governance Gaps”
Albert C. Lin, University of California Davis School of Law, “Litigative Uncooperative Federalism”
Jill M. Fraley, Washington & Lee University School of Law, “Modern Property Theory’s Risks for Environmental Law”

Panel: “Energy Justice and Equity in a Decarbonizing World”

Room 250

Felix Mormann, Texas A&M University School of Law
Kristen van de Biezenbos, University of Calgary Faculty of Law
Joel Eisen, University of Richmond School of Law
Jonas Monast, University of North Carolina School of Law

Panel: “Sustainability Law and Social Science”

Room 240

Bruce Huber, University of Notre Dame Law School
Shi-Ling Hsu, Florida State University College of Law
Jonathan Nash, Emory University School of Law
Stephanie Stern, Chicago-Kent College of Law, Illinois Institute of Technology

Ethics CLE Opportunity

Room 250

“Navigating Ethical Issues in a Sustainability-Related Practice” (eligible for CLE “Ethics” Credit)
Denton Robinson (Partner – DR Law PLLC)
Abstract:
Climate change has significant consequences for land conservation. Government agencies and nonprofit land trusts heavily rely on perpetual conservation easements. However, climate change and other dynamic landscape changes raise questions about the effectiveness and adaptability of permanent conservation instruments like conservation easements. Building upon a study of 269 conservation easements and interviews with 70 conservation-easement professionals in six different states, this paper examines the adaptability of conservation easements to climate change. It outlines four potential approaches to enhance conservation outcomes under climate change: (1) shift land-acquisition priorities to account for potential climate change impacts; (2) consider conservation tools other than perpetual conservation easements; (3) ensure that the terms of conservation easements permit the holder to adapt to climate change successfully; and (4) provide for more active stewardship of conservation lands. There is still a good deal of uncertainty as to the legal fate of a conservation easement that no longer meets its original purposes. Many state laws provide that conservation easements can be modified or terminated in the same manner as traditional easements. Yet conservation easements are in many ways unlike other easements. The beneficiary is usually the public, not merely a neighboring landowner, and the holder is always a nonprofit conservation organization or a government agency. Thus, there is a case to be made for adaptive protection. An overly narrow focus on perpetual property rights could actually thwart efforts to meet adaptation needs over the long term. We call for careful attention to ensuring conservation outcomes in dynamic landscapes over time.

What is the Morrison Prize Contest?
The Morrison Prize is a $10,000 cash prize awarded to the author(s) of the most impactful sustainability-related legal academic paper published in North America during the previous year. The Morrison Prize Contest bears the name of its funder, Richard N. Morrison, who is also the co-founder of Arizona State University’s Morrison Institute for Public Policy. Mr. Morrison is a successful Arizona attorney and philanthropist who has published multiple law journal articles on water law and environmental law topics and given dozens of presentations in those areas over his distinguished career. The Program on Law and Sustainability wishes to express its deepest appreciation to Mr. Morrison for his generous funding of the contest.