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

Welcome

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 Hernandex-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

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

Climate Change Challenges for Land Conservation: Rethinking Conservation Easements, Strategies, and Tools, 95 Denver L. Rev. 727 (2018).

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" Erin Ryan, Florida State University College of Law, "Breathing Air with Heft: An Experiential Report on Environmental Law and Public Health in China"

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-Motiviated 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

Schedule



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

Schedule



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 Dacarbonizing 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)



Morrison Prize

2019 Morrison Prize Contest Winner

Climate change challenges for land conservation: Rethinking conservation easements, strategies, and tools



Jessica Owley, Federico Cheever, Adena R. Rissman, M. Rebecca Shaw, Barton H. Thompson Jr. & W. William Weeks

95 DENVER L. REV. 727 (2018)

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.



Law and Sustainability

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