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1978-Present Lewis and Clark Law School
Portland, Oregon

Jeffrey Bain Faculty Scholar (2011-present); Professor of Law (1985-present); Associate Professor (1982-85); Assistant Professor (1979-82); Natural Resources Fellow (1978-79). Co-Director, Northwest Water Law and Policy Project (1994-2001); Editor, Anadromous Fish Law Memo, Oregon State University Sea Grant College Program (1979-1990).

Visiting Summer Faculty, Vermont Law School (2011, 2014, 2015); Visiting Professor, Boalt Hall, University of California-Berkeley (2004); Fulbright Professor, University of Athens (1991); Visiting Professor, University of Melbourne (1988); Visiting Professor, University of San Francisco (1983).

Courses Taught: (Active) Property, Public Lands and Resources Law, Natural Resources Law, American Legal History, Public Trust Doctrine Seminar, Native American Natural Resources Law. (Inactive) Environmental Law, Pacific Salmon Law Seminar, Constitutional Law, Water Law, Wildlife Law, Northwest Energy Law, Alaskan and Canadian Natural Resources Law Seminar, Ocean and Coastal Law.

1977-78 U.S. Environmental Protection Agency, Water Enforcement, Washington, D.C.

Attorney/Advisor: Drafted permit issuance criteria and state program approval regulations under section 404 of the Clean Water Act; negotiated intergovernmental agreements with the U.S. Army Corps of Engineers; drafted EPA's policy on coastal zone management.

1974-77 Center for Natural Areas (a Smithsonian Institution affiliate), Washington, D.C.
Assistant Director of Law (1976-77); Legal Assistant (1974-76).

Member of an interdisciplinary environmental management team involved in legal, economic, and institutional analysis of federal, state and local government conservation plans and development projects. Clients included the President's Council on Environmental Quality, the U.S. Environmental Protection Agency, the Nuclear Regulatory Commission, the National Oceanic and Atmospheric Administration, the State of Alaska, and Los Angeles County.

EDUCATION

- LL.M. 1979
(Highest Honors) National Law Center, George Washington University,
Washington, D.C. Thesis: “A Legal and Institutional Evaluation of the U.S.
Army Corps of Engineers Dredge and Fill Regulatory Program.”
- J.D. 1976
(Honors) National Law Center, George Washington University,
Washington, D.C. Trustee Scholarship.
Internship with the President's Council on Environmental Quality, 1975-76.
- B.A. 1972
(cum laude) Williams College, Williamstown, Massachusetts (*cum laude*).
Honors in American History and Literature. George G. Mead Scholarship.
Varsity Football.

BOOKS

A Brief American Legal History (West Publishing, Nutshell Series, 2023).

Pacific Salmon Law and the Environment: Treaties, Endangered Species, Dam Removal, Climate Change, and Beyond (Environmental Law Inst., 2022)

Native American Natural Resources Law: Cases and Materials (Carolina Academic Press, 1st ed. 2002; 2nd ed. 2008; 3rd ed. 2013; 4th ed. 2018, 5th ed. 2023) (with teacher’s manual and annual teacher’s updates) (co-author).

The Public Trust Doctrine in Environmental and Natural Resources Law (Carolina Academic Press, 1st ed. 2013; 2nd ed. 2015, 3rd ed. 2021) (with teacher’s manual and annual teacher’s updates) (co-author).

Natural Resources Law: Private Rights and the Public Interest (West Pub. Co., 2015) (with teacher’s manual) (co-author).

Sacrificing the Salmon: A Legal and Policy History of the Decline of Columbia Basin Salmon (BookWorld Publications, 2002, republished by Vandeplas Publishing, 2013).

The Northwest Salmon Crisis: A Documentary History (Oregon State University Press 1996) (contributing author).

Waters and Water Rights (The Michie Co. 1991, 1994, 1996, Lexis-Nexis 2004, 3d. ed. 2009) (author of chapters on Reserved Water Rights, (1991-2011) Federal Hydroelectric Regulation (1991-2000), and the Columbia River Basin (1991-2017).

Environmental Law: International Library of Essays in Law and Legal Theory and (Dartmouth Publishing Co. 1992, New York University Press, 1993).

NEWSLETTER

Anadromous Fish Law Memo, 50 issues (1979-90) (published by Oregon State University Sea Grant).

MONOGRAPHS

The Public Trust Doctrine in Forty-Five States (2014 ed.) (edited contributions).

The Columbia River Basin: From the Stevens Treaties to the Northwest Power Act (available from the Northwest Water Law and Policy Project, 1994).

Salmon Law and History: Sources and Analysis (available from the Northwest Water Law and Policy Project, 1994) (co-author).

Highways and the Environment: Resource Protection and the Federal Highway Program (study for the National Transportation Research Board, 1994; winner of Vance Award for best publication on transportation law in 1994).

NEWSPAPER OPINION ARTICLES

Use of Oswego Lake continues to be reserved for the rich, Oregonian/Oregon Live (Apr. 16, 2023).

The decade-long fight for public access to Oswego Lake, Oregonian/Oregon Live (May 8, 2022).

Oregon court ignores climate change danger in youth case, Oregonian/Oregon Live (Jan. 18, 2019) (with Mary Wood).

The Trump administration is redefining ‘the public’ in ‘public lands,’ Los Angeles Times (Jan. 12, 2018).

Oregon Monuments Need Protection from Logging, High Country News (May 4, 2017)

A Misguided Attack on the Cascade-Siskiyou National Monument, Oregonian/Oregon Live (April 4, 2017).

Obama’s National Monuments Were Lawful, not Land Grabs, Los Angeles Times (Jan. 23, 2017) (with Hillary Hoffman).

Earth on the Docket: Why Obama can’t Ignore this Climate-Change Lawsuit by America’s Youth, The Conversation (Dec. 15, 2016) (with Mary C. Wood)

The death of a unique Oregon lake, Oregonlive.com (May 2, 2016) (with Viki Nadol).

Oregon standoff: Answers to questions about federal land ownership, Oregonlive.com (Jan. 14, 2016).

Forest bill will allow more clear cuts without benefits, OregonLive.com (Jul. 18, 2015).

Oregon is indifferent to climate change, Oregonlive.com (Jun. 6, 2015).

City Hall, Oswego Lake, and the Politics of Power, Lake Oswego Review (May 28, 2015).

Salmon are flourishing because of judge’s orders, OregonLive.com (Nov. 8, 2014).

The Wilderness Act celebrates a half century, Oregonlive.com (Mar. 15, 2014).

Attorney General Must Represent Oregonians, Eugene Register-Guard (Jan. 14, 2014) (with Mary Wood).

Undermining Oregon's Public Trust Doctrine, OregonLive.com (Dec. 5, 2013) (with Mary Wood).

O&C lands bill threatens forest watersheds, OregonLive.com (September 14, 2013).

Governor John Kitzhaber's call for a new salmon plan makes sense, OregonLive.com (October 9, 2012).

DeFazio Bill Slight Water Quality, Recreation, Salmon, OregonLive.com (March 24, 2012).

Public Access Struggle: Citizens have a right to publicly-owned Oswego Lake, The Oregonian (Jan. 21, 2012); also published in the Lake Oswego Review as *End Monopolization of Oswego Lake* (Jan. 19, 2012).

Climate Change Litigation has Sound Footing in Law, Missoulian (June 14, 2011) (with Jack Tuholske).

Forming An Environmental Legacy: For Obama, a mixed record on the environment, The Oregonian (Jan. 19, 2011).

Obama disappoints when it comes to salmon, High Country News (Oct. 13, 2009).

For wild salmon, more business as usual, OregonLive.com (Oct. 9, 2009).

The right way to cap and trade, OregonLive.com (Aug. 17, 2009).

Big guys, little guys and Measure 49, OregonLive.com (Oct. 25, 2007) (with Lydia Loren).

Measure 37 and the Legislature: Inject some clarity in our land-use laws, The Oregonian at B7 (Jan. 23, 2007).

Walden bill hurts endangered species, The Bend Bulletin at C6 (Oct. 21, 2005).

Walden's peer review a smoke screen, The Bend Bulletin (Aug. 2, 2004).

Bush's sweetheart settlement policy bad for the environment, The Bend Bulletin (June 19, 2004).

BPA tally of salmon costs pretty fishy, Seattle Post-Intelligencer (Sept. 26, 2002).

BPA's notion of salmon costs turns word on its head, The Oregonian (March 6, 1993).

BPA plight exaggerated by industry, The Oregonian at B9 (March 6, 1995).

BPA should change salmon-saving plan, The Oregonian (March 6, 1993).

Higher BPA fish flow insufficient for salmon, The Oregonian at B7 (March 14, 1991).

Forest service road-building destroys wildlife habitat, Eugene Register-Guard at 11A (Oct. 7, 1987).

End forest service subsidies for timber roads, The Oregonian (June 10, 1987).

BPA foot-dragging dooms salmon runs, The Oregonian (Jan. 3, 1984).

BPA flouts intent of fishery program, The Oregonian at C7 (Nov. 10, 1982).

LAW REVIEW ARTICLES, BOOK CHAPTERS and BOOK REVIEWS (2010 to present)

SSRN Author Page:

https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=186450

Salmon, Climate Change, and the Future. 52 Environmental Law Reporter 10980 (2022).

Our Common Ground: An Appreciative Essay on John Leschy's Public Lands History, 31 New York U. J. of Environmental Law 315 (2022).

The World's Largest Dam Removal Project: The Klamath River Dams, 101 Oregon L. Rev. 1 (2022) (Dara Illowsky '22).

The 30 by 30 Proposal, Areas of Critical Environmental Concern, and the Protection of Tribal Cultural Lands, 52 Environmental Law Reporter 10366 (2022) (with Greg Allen '23)

Constitutionalizing the Public Trust Doctrine in Chile, 52 Environmental Law 649 (2022) (with Matthew Hebert '23).

Federal Grazing Lands and Their Suitability as 'Conservation Lands' in the 30 by 30 Program, 52 Environmental Law Reporter 10279 (2022) (with Kacey Hovden '22 & Greg Allen '23).

Emerging Best Practices in International Atmospheric Trust Case Law, 2022 Utah L. Rev. 941 (with Rachel Pemberton '22)

The Public Trust Doctrine and the Chicago Lakefront, 11 Michigan J. of Environmental and Administrative Law 315 (2022).

Walker Lake and the Public Trust in Nevada's Waters, 40 Virginia Environmental L. J. 1 (2022) (with Michael Benjamin Smith '21).

The Mistake on the Snake: The Lower Snake River Dams, 58 Idaho L. Rev. 1 (2022).

The World's Largest Ecosystem Management Plan: The Northwest Forest Plan After a Quarter-Century, 52 Environmental Law 151 (2022) (with Susan Jane Brown & Chelsea Stewart-Fusek '22).

Tribal Consultation: Toward Meaningful Collaboration with the Federal Government, 33 Colorado Environmental L. Rev. 1 (2022) (with Lizzy Pennock '21).

The Protection of Nature and a New Constitution for Chile: Lessons from the Public Trust Doctrine, Chile-California Conservation Exchange (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3847110 (with co-authors).

Undamming the Pacific Northwest: An Update, chap. 18 of *Salmon Law and the Environment: Treaties, Endangered Species, Dam Removal, Climate Change and Beyond*, Environmental Law Online (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3794819.

Right-Sizing the Supreme Court: A History of Congressional Changes, 72 Case Western Reserve L. Rev. 9 (2021) (with Kate Flanagan '21 and Annamarie White '22).

Salmon and the Clean Water Act: An Unfinished Agenda, 51 Environmental Law Reporter 10109 (2021) (with Michael Benjamin Smith '21).

Adding Confusion to the Muddy Waters of the Oswego Lake Decision: A Response to Dean Huffman, Environmental Law Online (2020) (with Ryan Roberts '21), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3657589.

Oregon's Amphibious Public Trust Doctrine: The Oswego Lake Decision, 50 Environmental Law 1229 (2020) (with Ryan Roberts '21).

The Public Trust Doctrine Fifty Years after Sax and Some Thoughts on its Future, 44 Public Land & Resources L. Rev. 1 (2021) (with Zach Schwartz '21).

The Belloni Decision and Its Legacy: United States v. Oregon and Its Far-Reaching Effects After a Half-Century, 50 Environmental Law 347 (2020) (with Cari Baermann '20).

Environmental Law at 50: A Cutting-Edge Journal Examining the Central Issues of Our Time, 50 Environmental Law 1 (2020).

A Dozen Landmark Nuisance Cases and Their Environmental Significance, 62 Arizona L. Rev. 403 (2020).

The Wild and Scenic Rivers Act at 50: Overlooked Watershed Protection, 9 Michigan J. of Environmental and Administrative Law 1 (2019) (with Max Yoklic '19).

Revisiting Background Principles in Takings Litigation, 71 Florida L. Rev. 1165 (2019) (with Rachel Wolford '19).

The Fight Over Columbia Basin Salmon Spills and the Future of the Lower Snake River Dams, 9 Washington J. of Environmental Law and Policy 1 (2019) (with Doug DeRoy '19).

Democratizing Treaty Fishing Rights: Denying Fossil-Fuel Exports in the Pacific Northwest, 30 Colorado Natural Resources, Energy & Environmental Law Review 1 (2019) (with Jeffrey Litwak).

Indigenous Rights in the U.S. Marine Environment: The Stevens Treaties and Their Effects on Harvests and Habitat, in *Indigenous Rights in the Marine Environment* (Hart Publishing, 2019) (with Olivier Jamin '17, LL.M. '18); <https://ssrn.com/abstract=3176105>.

Proprietary and Sovereign Public Trust Duties: From Justinian and Hale to Lamprey and Oswego Lake (with Courtney Engel '19), 43 VERMONT L. REV. 1 (2019),

The Trump Administration's Public Lands Revolution: Redefining "the Public" in Public Lands Law, 48 ENVIRONMENTAL LAW 311 (2018) (part of Environmental Law's spring symposium on the Trump Administration, with Olivier Jamin '17, LL.M. '18).

"No Ordinary Lawsuit:" Climate Change, Due Process, and the Public Trust Doctrine, 67 AMERICAN U. L. REV. 1 (2017) (with Mary Wood).

"Coordinating" with the Federal Government: Assessing County Efforts to Control Decisionmaking on Public Lands, 38 PUBLIC LAND AND RESOURCES LAW REVIEW 1 (U. Montana) 1 (2017) (with James Fraser '17).

The Nation's First Forester-In-Chief: The Overlooked Role of FDR and the Environment, 33 JOURNAL OF LAND USE AND ENVIRONMENTAL LAW 25 (Florida State) (2017).

Still Crying Out For a "Major Overhaul" After All These Years—Salmon and the Fourth Failed Biological Opinion on Columbia Basin Hydroelectric Operations (with Julianne Fry M.L.S. '16 & Olivier Jamin '17), 47 ENVIRONMENTAL LAW 287 (2017).

Indian Treaty Fishing Rights and the Environment: Affirming the Right to Habitat Protection and Restoration, 92 WASHINGTON LAW REVIEW 1 (2017).

The Public Trust as an Antimonopoly Doctrine (with Aurora Paulsen, LL.M. '16), 44 BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW 1 (2017).

The Property Clause and Its Discontents: Lessons from the Malheur Occupation (with Olivier Jamin '17), 43 ECOLOGY LAW QUARTERLY (UC-Berkeley) 781 (2016).

Two Wrongs?: Correcting Professor Lazarus's Erroneous View of the Public Trust Doctrine, 46 ENVIRONMENTAL LAW 481 (2016) (response to a Harvard law professor's remarks at a Lewis and Clark Law symposium).

Federal Reserved Water Rights as a Rule of Law, 50 IDAHO LAW REVIEW 369 (2016) (a critical response to an article co-authored by former student—and Distinguished Environmental Graduate and Law School trustee—Jeff Fereday '80), (article was requested by a former LL.M. student now on the Idaho Law faculty, an advisor to the Idaho Law Review).

Horne v. Department of Agriculture: Expanding Per Se Takings While Endorsing State Sovereign Ownership of Wildlife, 75 MARYLAND LAW REVIEW 657 (2016) (co-authored with John Echeverria, Vermont Law School).

Antimonopoly in American Public Land Law, 28 GEORGETOWN ENVIRONMENTAL LAW REVIEW 155 (2016) (co-authored with Kara Tebeau '15).

(Ground)Waters of the United States: Unlawfully Excluding Tributary Groundwater from Clean Water Act Jurisdiction, 46 ENVIRONMENTAL LAW 333 (2016) (co-authored with Steven M. Thiel '15) (part of a symposium on Clean Water Act jurisdiction).

Shared Sovereignty: The Role of Expert Agencies in Environmental Law, 42 ECOLOGY LAW QUARTERLY (U.C. Berkeley) 609 (2015) (co-authored with Andrea Lang '15, LL.M. '16).

Defending the Constitutionality of the Endangered Species Act: The Case of the Utah Prairie Dog, ON THE MERITS (Washington Legal Foundation, June 2015), (requested by the Washington Legal Foundation).

The Federal Public Trust Doctrine: Misinterpreting Justice Kennedy and Illinois Central Railroad, 45 ENVIRONMENTAL LAW 399 (2015) (co-authored with Lynn Schaffer LL.M. '15) (part of Environmental Law's symposium on the public trust doctrine).

Vetoing Wetland Permits under Section 404(c) of the Clean Water Act: A History of Inter-Federal Agency Controversy and Reform, 33 U.C.L.A. JOURNAL OF ENVIRONMENTAL LAW & POLICY 215 (2015) (co-authored with Elisabeth Mering '16).

Endangered Species Act Listings and Climate Change: Avoiding the Elephant in the Room, 20 ANIMAL LAW 277 (2014) (co-authored with Kya Marienfeld '14) (for a symposium).

Salmon Hatcheries as Fish Factories: Forgetting the Lessons of Leopold, 4 SEATTLE JOURNAL OF ENVIRONMENTAL LAW 409 (2014) (book review), earlier version at 115 OREGON HISTORICAL QUARTERLY 137 (2013).

The Struggle Over the Columbia River Gorge: Establishing and Governing the First National Scenic Area, 4 WASHINGTON JOURNAL OF ENVIRONMENTAL LAW AND POLICY 287 (2014) (co-authored with Nathan Baker '00) (book review).

The Underappreciated Role of the National Environmental Policy Act in Wilderness Designation and Management, 44 ENVIRONMENTAL LAW 323 (2014) (co-authored with Lorena Wischart '13).

Anti-Monopoly and the Radical Lockean Origins of Western Water Law, 20 HASTINGS WEST-NORTHWEST JOURNAL OF ENVIRONMENTAL LAW AND POLICY 377 (2014) (book review essay).

Federal Wild Lands Policy in the Twenty-First Century: What a Long, Strange Trip It's Been, 25 COLORADO NATURAL RESOURCES, ENERGY AND ENVIRONMENTAL LAW REVIEW 1 (2014) (co-authored with Andrew Erickson '13).

Lands Council, Karuk Tribe, and the Great Environmental Divide in the Ninth Circuit, 54 NATURAL RESOURCES JOURNAL 1 (2014) (co-authored with Maggie Hall '14).

The Past as Prologue to the Present: Managing the Oregon and California Railroad Lands, OREGON BAR BULLETIN (July 2013) (co-authored with Tim Wigington '12).

The Public Trust in Wildlife, 2013 UTAH LAW REVIEW 1437 (2013) (co-authored with Aurora Paulsen '12).

The Oregon and California Railroad Grant Lands' Sordid Past, Contentious Present and Uncertain Future: A Century of Conflict, 40 BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW 1 (2013), (co-authored with Tim Wigington '12).

Using the Public Trust Doctrine to Achieve Ocean Stewardship, in RULE OF LAW FOR NATURE: NEW DIMENSIONS AND IDEAS IN ENVIRONMENTAL LAW (Christine Voight & Hames Christian Bugge, eds., Cambridge Press, 2013) (co-author).

Dam Removal in the Pacific Northwest: Lessons for the Nation, 42 ENVIRONMENTAL LAW 1043 (2012) (co-authored with Andrew Erickson '13).

Pluralism and the Environment Revisited: The Role of Comment Agencies in NEPA Litigation, 37 VERMONT LAW REVIEW 5 (2012) (co-authored with Marla Nelson '12).

The Role of the Judge in Endangered Species Act Implementation: District Judge James Redden and the Columbia Basin Salmon Saga, 32 STANFORD ENVIRONMENTAL LAW JOURNAL 87 (2012) (co-authored with Aurora Paulsen '12).

The Overlooked Role of the National Environmental Policy Act in Protecting the Western Environment: NEPA and the Ninth Circuit, 2 WASHINGTON JOURNAL OF ENVIRONMENTAL LAW AND POLICY 193 (2012), (co-authored with Keith Mosman '12).

Internationalizing the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxion Vision, 45 UNIVERSITY OF CALIFORNIA DAVIS LAW REVIEW 741 (2012) (co-authored with Rachel Guthrie '12).

Oregon's Public Trust Doctrine: Public Rights in Waters, Wildlife, and Beaches, 42 ENVIRONMENTAL LAW 375 (2012) (co-authored with Erika Doot '11) (for a symposium).

The Water Law Scholarship of Jim Huffman and Janet Neuman, 42 ENVIRONMENTAL LAW 1 (2012) (for a symposium).

The Florida Beach Case and the Road to Judicial Takings, 35 WILLIAM & MARY ENVIRONMENTAL LAW AND POLICY REVIEW 713 (2011) (co-authored with Elizabeth Dawson '11).

Why Aboriginal Title is a Fee Simple Absolute, 15 LEWIS AND CLARK LAW REVIEW 975 (2011) (for a symposium).

The Columbia River Gorge and the Development of American Natural Resources Law: A Century of Significance, 20 NEW YORK UNIVERSITY ENVIRONMENTAL LAW REVIEW 1 (2011).

The Real Story Behind the Columbia Basin Salmon Debacle: Dam Preservation under the Endangered Species Act, 42 ENVIRONMENTAL LAW 1363 (2011) (book review essay).

Reinvigorating the Public Trust Doctrine: Expert Opinion on the Potential of a Public Trust Mandate in U.S. and International Law, 52 ENVIRONMENT MAGAZINE 6 (2010) (co-authored with several others).

Present At the Creation: The 1910 Big Burn and the Formative Days of the U.S. Forest Service, 37 ECOLOGY LAW QUARTERLY (UC Berkeley) 1217 (2010) (book review), reprinted at 32 PUBLIC LAND AND RESOURCES LAW REVIEW (U. Montana) 193 (2011).

The Public Trust Doctrine and Private Property: The Accommodation Principle, 27 PACE ENVIRONMENTAL LAW REVIEW 649 (2010).

Background Principles, Takings and Libertarian Property; A Reply to Professor Huffman, 37 ECOLOGY LAW QUARTERLY (UC Berkeley) 805 (2010) (co-authored with J.B. Ruhl, Vanderbilt Law School).

The Public Trust Doctrine – A Twenty-First Century Concept, 16 HASTINGS WEST-NORTHWEST JOURNAL OF ENVIRONMENTAL LAW AND POLICY 105 (2010).

Debunking The ‘Divine Conception’ Myth: Environmental Law Before NEPA, 37 ECOLOGY LAW QUARTERLY (UC Berkeley) 269 (2010) (book review), reprinted at 121 OREGON HISTORICAL QUARTERLY 632 (2009).

AMICUS BRIEFS (principal author)

The Public Trust, Atmospheric Pollution, and the Oregon Supreme Court: A Law Professors' Amicus Brief, in Chernaik v. Brown (2020) (with Mary Wood,
https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=186450).

Climate Change and the Public Trust Doctrine in Oregon: A Law Professors' Amicus Brief in Chernaik v. Brown in the Oregon Court of Appeals (2019) (with Mary Wood),
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3420549.

The Public Trust Doctrine and Access to a Navigable Lake from Public Parklands: A Law Professors' Amicus Brief in Kramer v. City of Lake Oswego (Oregon Supreme Court, 2018),
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3085697.

The Public Trust Doctrine and Public Access to an Allegedly Private Navigable Lake: A Law Professors' Amicus Brief in Kramer v. City of Lake Oswego (Oregon Court of Appeals, 2017),
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2563331.

OLDER ARTICLES (1976-2009, by subject matter)

A. General Environmental Law

From Martz to the Twenty-First Century: A Half-Century of Natural Resources Law Casebooks and Pedagogy, 78 Colorado Law Review 647 (2007) (co-authored with David Becker) (for a symposium).

Justice Kennedy and the Environment: Property, States-Rights, and a Persistent Search for Nexus, 83 Washington Law Review 665 (2007) (co-authored with Sherry Bosse).

Gonzalez v. Raich, the ‘Comprehensive Scheme’ Principle, and the Constitutionality of the Endangered Species Act,

35 Environmental Law 491 (2005) (co-authored with George Kimbrell).

Flies, Wolves, Spiders, Toads and the Constitutionality of the Endangered Species Act, 34 Environmental Law 309 (2004) (co-authored with George Kimbrell).

Bureaucratic Boundaries vs. Clean Water: A Reply to Cliff Villa, 34 Environmental Law 815 (2004) (co-authored with William Warnock).

Roads Not Taken: EPA vs. Clean Water, 33 Environmental Law 79 (2003) (for a symposium) (co-authored with William Warnock).

Twenty Years of Environmental Law: Role Reversals Between Congress and The Executive, Judicial Activism Undermining The Environment, and The Proliferation of Environmental (and Anti-Environmental) Groups, 20 Virginia Environmental Law Journal 5 (2001) (for a symposium).

Environment, Economy, and Community in the Pacific Northwest, 17 (University of Montana) Public Land and Resources Law Review 1 (1996).

Studying Environmental Law: An Overview and a Seminar Outline, 12 Journal of Energy, Natural Resources and Environmental Law 309 (1992).

A Primer on Environmental Law and Some Directions for the Future, 11 Virginia Environmental Law Journal 381 (1992), reprinted in 2 Environmental Law Anthology 809 (Law Book Publishers, 1992-93) (also published in Greek in the University of Athens Law Review, 1992).

The Fallacies of Free Market Environmentalism, 15 Harvard Journal of Law and Public Policy 371 (1992) (for a symposium), reprinted in 2 Environmental Law Anthology 431 (Law Book Publishers, 1992-93); and An Environmental Law Anthology 319 (Anderson Pub. Co., 1996).

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The National Environmental Policy Act At Twenty: A Preface, 20 Environmental Law 447 (1990) (for a symposium).

Liberty, the New Property, and Environmental Law, 24 University of San Francisco Law Review 385 (1990) (for a symposium).

The Origin, Evolution, and Direction of U.S. National Environmental Policy Act, 5 (Australian) Environmental Law and Planning Journal 177 (1988).

Environmental Decision-making, Judicial Review, and the Democratization of the Leviathan State: Some Comments on the Huffman/Funk Colloquy, 4 Advocate no. 2 at 10 (Lewis and Clark Law School alumni magazine, 1985).

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The Marine Sanctuaries Program: A Framework for Critical Areas Management in the Sea, 8 Environmental Law Reporter (Environmental Law Institute) 50016 (1978) (reprinted in Senate Commerce Committee, Hearings on the Marine Protection, Research, and Sanctuaries Act, Serial No. 95-65, at 45) (co-authored with Joel Blumstein).

Evaluating State Coastal Zone Plans: Questions to Ask, in Coastal Zone '78, at 98 (1978) (co-authored with several others).

The Promise of Federal Consistency Under Section 307 of the Coastal Zone Management Act, 6 Environmental Law Reporter (Environmental Law Institute) 50047 (1976) (co-authored with John Noble).

B. Constitutional Takings of Property

Enacting Libertarian Property: Oregon's Measure 37 and Its Implications, 85 Denver University Law Journal 279 (2008) (co-authored with Erik Grafe).

Lucas's Unlikely Legacy: The Rise of Background Principles as Categorical Takings Defenses, 29 Harvard Environmental Law Review 321 (2005) (co-authored with Lucas Ritchie).

Palazzolo and the Decline of Justice Scalia's Categorical Takings Doctrine, 29 Boston College Environmental Affairs Law Review 137 (2002) (for a symposium).

The End of Environmental Law?: Libertarian Property, Natural Law, and the Just Compensation Clause in the Federal Circuit, 25 Environmental Law 171 (1995) (for a symposium).

Property Myths, Judicial Activism, and the Lucas Case, 23 Environmental Law 907 (1993) (for a symposium).

C. Public Lands / Natural Resources

Norton v. SUWA and the Unraveling of Federal Public Land Planning, 18 Duke Journal of Environmental Law and Policy 105 (2007) (co-authored with Sherry Bosse).

Protecting the Columbia River Gorge: A Twenty-Year Experiment in Land-Use Federalism, 21 Journal of Land Use and Environmental Law (Florida State) 201 (2006) (co-authored with Joshua Smith).

The Pioneer Spirit and the Public Trust: The American Rule of Capture and State Ownership of Wildlife, 35 Environmental Law 673 (2005) (co-authored with Lucas Ritchie) (for a symposium).

The Bush Administration's Sweetheart Settlement Policy: A Trojan Horse Strategy for Advancing Commodity Production on the Public Lands, 34 Environmental Law Reporter (Environmental Law Institute) 10397 (2004).

Water For National Forests: The Bypass Flow Controversy and The Great Divide in Western Water Law," 18

Stanford Environmental Law Review 3 (1999) (co-authored with Janet Neuman).

The Proposed Transfer of BLM Timber Lands to the State of Oregon: Environmental and Economic Questions, 32 Land and Water Law Review (University of Wyoming) 353 (1997) (co-authored with Jonathan Lovvorn) (for a symposium).

The Case Against Transferring BLM Lands to the States, 7 Fordham Environmental Law Journal 387 (1996).

Public Choice Theory and the Public Lands: Why Multiple Use Failed, 18 Harvard Environmental Law Review 405 (1994).

Ancient Forests and the Supreme Court: Issuing a Blank Check for Appropriation Riders, 43 Washington U. Journal of Urban and Contemporary Law 35 (1993) (for a symposium).

Ancient Forests, Spotted Owls, and Modern Public Land Law, 18 Boston College Environmental Affairs Law Review 605 (1991).

D. Water Law

Renouncing the Public Trust Doctrine: An Assessment of the Validity of Idaho House Bill 794, 24 Ecology Law Quarterly (University of California-Berkeley) 461 (1997) (co-authored with Harrison Dunning & Scott Reed).

Seven Myths of Northwest Water Law and Associated Stories, 26 Environmental Law 141 (1996) (for a symposium).

Mono Lake and the Evolving Public Trust in Western Water, 37 University of Arizona Law Review 701 (1995) (co-authored with Thea Schwartz).

Pinchot, Property Rights, and Western Water: A Reply to Greg Hobbs, 24 Environmental Law 1203 (1994).

The Rhetoric of Resistance to Water Reform: A Response to Hobbs' Critique of Long's Peak, 24 Environmental Law 171 (1994).

Unconventional Waters: The Quiet Revolution in Federal and Tribal Minimum Streamflows, 19 Ecology Law Quarterly (University of California-Berkeley) 445 (1992).

Public Property and the Democratization of Western Water Law: A Modern View of the Public Trust Doctrine, 19 Environmental Law 573 (1989) (for a symposium).

E. Tribal Natural Resources

Indian Treaty Fishing Rights and Habitat Protection: The Martinez Decision Supplies a Resounding Judicial Reaffirmation, 49 Natural Resources Journal (New Mexico) 653 (2009) (co-authored with Jane Steadman).

Not Much Less Necessary Than the Atmosphere...They Breathed: Salmon, Indian Treaties, and the Supreme Court—A Centennial Remembrance of United States v. Winans and Its Enduring Significance, 46 Natural Resources Journal (New Mexico) 489 (2006) (co-authored with James Brumberg).

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F. Salmon/Hydropower

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Hydropower vs. Salmon: The Struggle of the Pacific Northwest's Anadromous Fish for a Peaceful Coexistence With the Columbia River Power System, 11 Environmental Law 211 (1981).

G. Wetlands

The Clinton Wetlands Plan: No Net Gain in Wetlands Protection, 9 Florida State Journal of Land Use and Environmental Law (1994).

Wetlands Law: 'No Net Loss' and Its Decline, 4 Rivers 122 (1992) (co-author).

Federal Wetlands Protection Under the Clean Water Act: Intergovernmental Tension, Regulatory Ambivalence, and a Call for Reform, 60 University of Colorado Law Review 695 (1989) (co-authored with Bernard Zaleha).

The Clean Water Act's Section 404 Program Enters Its Adolescence: An Institutional and Programmatic Perspective, 8 Ecology Law Quarterly (University of California-Berkeley) 409 (1980).

Wetlands Protection and Coastal Planning: Avoiding the Perils of Positive Consistency, 5 Columbia Journal of Environmental Law 69 (1978).

SELECTED GOVERNMENT REPORTS (principal author)

- 1977 *Environmental Planning and the Siting of Nuclear Facilities: The Integration of Water, Air, Coastal, and Comprehensive Planning into the Nuclear Siting Process* (prepared for the U.S. Nuclear Regulatory Commission).
- 1977 *An Analysis of the Environmental Impacts of the Alternatives to Transport Alaska's Prudhoe Bay Natural Gas* (prepared for the Council on Environmental Quality).
- 1977 *An Assessment of the Need for a National Marine Sanctuaries Program* (prepared for the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce).
- 1976 *The Decision to Transport Alaskan Natural Gas from Prudhoe Bay: Issues and Decision makers* (prepared for the Office of Planning and Evaluation, Environmental Protection Agency).
- 1976 *The Role of Law in the Design and Management of the Santa Catalina Island Conservation and Recreation Plan: A Guide for Management* (prepared for the Los Angeles county Department of Parks and Recreation).
- 1976 *The Federal Role in Alaska's Coastal Zone Management Program* (prepared for the Office of the Governor, Alaska Coastal Management Program).
- 1976 *An Inventory and Analysis of Federal Statutes Affecting the Alaska Coastal Management Program* (prepared for the Office of the Governor, Alaska Coastal Management Program).
- 1975 *An Inventory and Analysis of Existing Land Management Tools in Alaska* (prepared for the Office of the Governor, Alaska Coastal Management Program).

AWARDS, PROFESSIONAL ACTIVITIES AND AFFILIATIONS

Chair, American Association of Law School's Natural Resources Law Section, 2005-07.

Northwest Power Act Leader, selected by the Northwest Power Planning Council and the Bonneville Power Administration, 2005.

Co-Director, Northwest Water Law and Policy Project, 1994-2001.

Principal Investigator Anadromous Fish Law Project, Oregon State University Sea Grant Program, 1979-1990.

Distinguished Environmental Visitor, Vermont Law School, 2011; Florida State University, 1994; University of Calgary, 1990; Universities of Melbourne, Adelaide, Tasmania, and Queensland (Australia), 1988.

Lewis and Clark Law School Committee Chair, Appointments Committee, 2006-07; Promotion and Tenure Committee, 1994-1996; Natural Resources Committee, 1983-87, 1988-91, 1993-94, 1999-2001, 2004-05, 2015-16; Externship Committee, 1980-82.

Law Review Advisor, *Environmental Law*, *Animal Law*, *Journal of American Indian Law*.

Fulbright Fellowship, University of Athens (Greece), Fall 1991.

University Fellowship, University of Melbourne (Australia), Spring 1988.

Board Member, Waterwatch of Oregon, 1992-1994.

Faculty Enrichment Grant, Canadian Embassy, 1985-86.

Member, Pacific Northwest Power Planning Council Advisory Committee on Fish and Wildlife, 1981-83.

Bronze Medal for Commendable Service, U.S. Environmental Protection Agency, 1978; Certificate of Commendation, Office of Enforcement, U.S. Environmental Protection Agency, 1978.