Carved by Glaciers: Stewardship Across the Northern Rockies

38th Public Land Law Conference
In Partnership with the University of Calgary Faculty of Law

October 3-4, 2019
At the Alexander Blewett III School of Law at the University of Montana
PUBLIC LAND LAW CONFERENCE

DATE: Thursday, October 3 & Friday, October 4
LOCATION: Blewett School of Law, Room 201, Missoula, MT
TIME: 8 am – 6 pm (THURS.) & 8 am – 5 pm (FRI.)
MONTANA CLE CREDITS: 10.5 (TOTAL: 3.5 for THURS. & 7 for FRI.)

BACKGROUND:
This year’s conference explores how Canada and the United States approach environmental and natural resources challenges in their shared Norther Rockies ecosystem. Panels include Environmental Regulatory Approaches, Pipelines, Renewables & Our Energy Future, International Wildlife Corridors, Waters & Fisheries; and Tribal Sovereignty Over Natural Resources.

KEYNOTES:

Judicial Review in Environmental Matters in Canada – Canadian Supreme Court Justice Russell Brown

The Defense of Necessity: One Canadian Lawyer’s Journey to Address Climate Change – David Gooderham

OPTIONAL FIELD TRIP:
Journey through the Bitterroot Valley on this pre-conference Field Trip to learn about the geological, tribal, and cultural history of the valley and how this history impacts modern legal challenges involving wildfire, water, and wildlife management. Planned stops include Travelers Rest, Lolo Pass, and the Lee Metcalf Wildlife Refuge.

SPECIAL THANKS TO:

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SCHEDULE

THURS. OCTOBER 3

7:30am–3pm  Optional Field Trip to the Bitterroot Valley
5–6pm  Keynote: Judicial Review in Environmental Matters in Canada
The Honourable Russell Brown, Justice, Canadian Supreme Court
6–7pm  Reception

FRI. OCTOBER 4

7:30am  Breakfast
8:15am  Welcome & Introductions
8:30–9:45am  The Grass is Always Greener: Environmental Regulatory Approaches of Canada & the United States
Dr. Sara Rinfret, Professor of Public Administration, University of Montana (Moderator)
Sharon Mascher, Professor of Law, University of Calgary Faculty of Law
David Wright, Professor of Law, University of Calgary Faculty of Law
Shaun McGrath, Director, Department of Environmental Quality, Montana
9:45am  Break
10–11:15am  Tilting at Windmills: Pipelines, Renewables, and Our Energy Future
Sam Panarella, Professor of Law, Alexander Blewett III School of Law, University of Montana (Moderator)
Kristen Van De Biezenbos, Professor of Law, University of Calgary Faculty of Law
Carl Borgquist, President and CEO, Absaroka Energy, Bozeman, MT
Wes Furlong, Staff Attorney, Native American Rights Fund, Anchorage, AK
11:15am  Break
11:30am–12:30pm  Elk Don’t Have Passports: International Wildlife Corridors
Sandra Zellmer, Professor of Law, Alexander Blewett III School of Law, University of Montana (Moderator)
Harvey Locke, Co-Founder and Strategic Advisory, Yellowstone to Yukon Conservation Initiative (Video Introduction)
Jodi Hilty, President and Chief Scientist, Yellowstone to Yukon Conservation Initiative
12:30pm  Break
12:45–2pm  Milking It for All It’s Worth: Waters & Fisheries in a Changing Climate
Michelle Bryan, Professor of Law, Alexander Blewett III School of Law, University of Montana (Moderator)
Shaun Fluker, Professor of Law, University of Calgary Faculty of Law
Alastair Lucas, Professor of Law, University of Calgary Faculty of Law
Dr. Jon Drake, Fisheries Biologist and Attorney, National Oceanic & Atmospheric Administration (NOAA), Seattle, WA
2pm  Break
2:15–3:30pm  Backbone of the World: Tribes & First Nations as Sovereign Stewards
Monte Mills, Professor of Law, Alexander Blewett III School of Law, University of Montana (Moderator)
Nicole Schabus, Assistant Professor of Law, Thompson Rivers University, BC, Canada
Loren BirdRattler, Project Manager, Blackfeet Agricultural Resource Management Plan, Blackfeet Tribe, MT
Dr. Shane Doyle, Founder and Lead Consultant, Native Nexus Consulting
3:30pm  Break
3:45–4:45pm  Closing Address – The Defense of Necessity: One Canadian Lawyer’s Journey to Address Climate Change
David Gooderham, Retired Canadian Civil Litigation Attorney
ABOUT THE PUBLIC LAND & RESOURCES LAW REVIEW

The Public Land & Resources Law Review is run by a board of student editors at the University of Montana's Alexander Blewett III School of Law. The organization supports professional scholarship and student-written articles exploring legal issues related to public lands and land use, natural resources and the environment, and tribal & federal Indian relations.

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Justice Russell Brown is a justice of the Supreme Court of Canada. He was previously a member of the courts of Alberta, the Northwest Territories and Nunavut, prior to which he was a professor of law and associate dean (graduate studies) at the University of Alberta, where he remains an honorary professor of law. He was a research fellow of the Health Law & Science Policy Group and a fellow of the Alberta Institute for American Studies. He also served as chair of the Health Law Institute at the University of Alberta, chair of the University Appeals Board and Professional Review Board, and as a member of the governing board of the Canadian Forum on Civil Justice. Justice Brown is a member of the editorial board of the University of Toronto Law Journal and is an advisor to the Legal Writing Academy at the University of Ottawa.

Prof. Sharon Mascher is a Professor in the Faculty of Law at the University of Calgary and an Honorary Fellow in the Law School at the University of Western Australia. Prior to joining the Faculty of Law, Sharon held academic positions at the University of Western Australia, Victoria University of Wellington (New Zealand) and the University of Saskatchewan. Sharon’s research focuses on legal issues relating to climate change law, environmental law, property law, and laws affecting Indigenous peoples. Her recent publications include: “Striving for Equivalency across the Alberta, British Columbia, Ontario and Quebec Carbon Pricing Systems: the Pan-Canadian Carbon Pricing Benchmark” (2018) 18-8 Climate Policy 1012; and “Experience with Carbon Taxes and Greenhouse Gas Emissions Trading Systems” (2018) 29 Duke Environmental Law and Policy Forum 109-182 (with Erik Haites, Duan Maosheng, Kelly Sims Gallagher, Kenneth Richards & Masayo Wakabayashi). Sharon is also the co-editor of the Journal of Environmental Law and Practice.

Prof. David Wright is an Assistant Professor at the University of Calgary's Faculty of Law where he is a member of the Natural Resources, Energy and Environmental Law Research group and teaches tort law, dispute resolution and environmental assessment law. Prior to his faculty appointment, David held positions with Canada’s Commissioner of the Environment and Sustainable Development, the Gwich’in Tribal Council, the United Nations Development Programme, the law firm of Stewart McKelvey, and the Marine and Environmental Law Institute at Dalhousie University. He holds an MA and JD from Dalhousie University and an LLM from Stanford University. During his graduate studies at Stanford Law School, David was a fellow with the Stanford Woods Institute for the Environment. His research is focused on environmental and natural resources law with a particular emphasis on greenhouse gas emissions and climate change governance.

Director Shaun McGrath was appointed as Director of the Montana Department of Environmental Quality by Governor Steve Bullock in November 2018. McGrath most recently served as Regional Administrator of the U.S. Environmental Protection Agency for Region 8 in Denver. He was the Deputy Director for the White House Office of Intergovernmental Affairs acting as a liaison between the Obama Administration’s White House and the nation’s governors. He spent 14 years as a Program Director working on behalf of the bipartisan Western Governors’ Association, including during the tenures of Montana Governors Marc Racicot, Judy Martz, and Brian Schweitzer. His career started in Kansas as a Governor’s Fellow under Republican Governor Mike Hayden, and led to an appointment as Trade Manager for the Kansas Department of Commerce’s European Office in Stuttgart, Germany. He served as Mayor of Boulder, Colorado, from 2007 to 2009, and was elected twice to the Boulder City Council. McGrath has a Master’s of Public Administration from the University of Kansas and a Bachelor of Arts in Political Science and German from Kansas State University.
Prof. Kristen Van De Biezenbos joined the Faculty in 2017. Before that, Kristen taught energy law and related courses at the University of Oklahoma College of Law and Texas Tech University School of Law. She received her J.D. from Tulane University Law School in 2010 and interned for the honorable Judge Lance Africk at the U.S. District Court for the Eastern District of Louisiana. She subsequently had a mixed transactional and litigation practice in New Orleans, focused on offshore energy services, maritime law, and international arbitration. From 2013 to 2015, she was a Westerfield Fellow at Loyola University New Orleans College of Law. She also holds a B.A. from the University of Tennessee and an M.F.A. from the University of New Orleans. Kristen is a member of the Board of Advisory Editors for the Tulane Law Review and the Loyola Maritime Law Journal, and is a former trustee of the Rocky Mountain Mineral Law Foundation. She currently serves as chair of the Admiralty & Maritime Law section of the American Association of Law Schools.

Mr. Carl Borgquist is the founder of Absaroka Energy and is responsible for its corporate strategy, management, and operations. Absaroka is focused on supporting the growth of clean, sustainable energy through the development of utility-scale energy storage, transmission, geothermal, wind, and solar projects throughout the Western Interconnect. He previously served as an Assistant District Attorney for Alameda County, CA., in the Navy as a Judge Advocate, as a Special Assistant United States Attorney, and with the Davidson Companies as Director of Wealth Management. He holds a Bachelor of Arts in Political Science and Public Administration from California State University and a law Degree from the University of San Francisco.

Mr. Wes Furlong is a staff attorney in the Anchorage, Alaska, office. He joined NARF in 2016 as the inaugural Alaska Fellow. Wes grew up on Fir Island, Washington, north of Seattle, at the confluence of the Skagit River and the Salish Sea. He graduated with honors from the Davidson Honors College, University of Montana, in 2012 with a B.A. in History as a University Scholar. He received his J.D. from the Alexander Blewett III School of Law at the University of Montana in 2016 with Certificates in American Indian Law and Environmental & Natural Resources Law. Wes’s practice focuses primarily on ensuring the survivance of traditional, cultural resources and landscapes. In addition, his practice also includes tribal jurisdiction, sovereign immunity, banishment, trust lands, subsistence, and non-profit organization. Wes also has published scholarship on a wide range of federal Indian law topics, including treaty rights and salmon habitat restoration. He is admitted to practice in the states of Alaska and Montana, the United States District Court for the Districts of Alaska, Montana, and North Dakota, and the United States Court of Appeals for the Ninth Circuit.

Mr. Harvey Locke is co-founder and Strategic Advisor to the Yellowstone to Yukon Conservation Initiative. He served as President or Vice President of the Canadian Parks and Wilderness Society for 17 years and is currently its Senior Advisor, Conservation. He is a member of the IUCN World Commission on Protected Areas and co-founded the Nature Needs Half movement. A native of the Calgary-Banff area of Canada, Harvey is globally known for his work on wilderness, national parks and large landscape conservation from Yellowstone to Yukon and beyond. Named by Time Magazine as one of Canada’s leaders for the 21st century, he was recently awarded the Fred M. Packard International Parks Merit Award by the IUCN, a prestigious global award that recognizes his extensive conservation work. Harvey has led work on major private lands conservation projects for connectivity, national park creation and management, climate change and nature conservation, and he was a member of the executive committee for the World Wilderness Congress (WILD9) held in Merida, Mexico, in 2009.
Dr. Jodi Hilty is an internationally recognized wildlife corridor ecologist and conservationist, with over 20 years of experience managing large-scale conservation programs. Prior to joining to Y2Y, Dr. Hilty served as Executive Director of the North America Program for the Wildlife Conservation Society, based in Bozeman, Montana, where she led the work of more than 50 staff working remotely across the continent. Through proven leadership and her ability to work collaboratively with other organizations, she was able to address a range of conservation challenges related to natural resource extraction, ecosystem connectivity and climate change. Dr. Hilty has overseen several ground-breaking initiatives, including developing the scientific basis for expanding Canada’s Nahanni National Park, guiding policy toward protecting the “Path of the Pronghorn,” the first U.S. federally-designated wildlife corridor, and conducting the science that proves the need for expanded land protections in the trans-border Crown of the Continent area linking Montana with Alberta and British Columbia. A prolific researcher and writer on topics related to large landscape conservation, connectivity and climate change, Dr. Hilty has been co-editor or lead author on three recent books, most recently Corridor Ecology: Linking Landscape for Biodiversity Conservation and Climate Adaptation (2019).

Prof. Shaun Fluker joined the Faculty of Law in 2007. He was called to the Alberta bar in 1996 and remains an active member of the Law Society of Alberta. Shaun has appeared as counsel before all levels of Alberta courts and the Supreme Court of Canada. Shaun works closely with the Faculty’s Public Interest Law Clinic, and served as its Executive Director until January 2019. When he is not at the law school, Shaun enjoys skiing and climbing in the mountains west of Calgary with family and friends. Shaun’s research is primarily in the following areas: (1) public participation and transparency in resources and environmental decision-making; (2) the implementation of environmental norms with law; (3) public interest litigation; and (4) the regulation of environmental markets. Shaun has published multiple law review articles, his most recent in 2018 entitled: An Analysis of Costs Awarded by the Alberta Energy Regulator.

Prof. Alastair Lucas has been a member of the Alberta Bar since 1968. Before joining the University of Calgary in 1976 as a founding faculty member, he was at the Faculty of Law, University of British Columbia from 1968 to 1976. During his term with the UofC Law School, he has served as Executive Director of the Canadian Institute of Resources Law, as Associate Dean (Research & Graduate Studies) and as Dean of Law from 2006 to 2011. He has been a consultant and policy advisor to several government departments and tribunals, and has held numerous professional appointments. Al is also an Adjunct Professor in the University of Calgary’s Faculty of Environmental Design. Until 2019, he was Director of the University of Calgary’s Sustainable Energy Development program, an interdisciplinary Master’s program with the Haskayne School of Business, Schulich School of Engineering, and the faculties of Law and Environmental Design. His awards include the Law Society of Alberta / Canadian Bar Association Distinguished Service Award for Legal Scholarship. Al serves as a Trustee of the Rocky Mountain Mineral Law Foundation, a member of the Alberta Energy Regulatory Forum Committee, and a member of the International Bar Association Section on Energy, Environment, Natural Resources, and Infrastructure Law’s Academic Advisory Committee.

Dr. Jon Drake received his J.D. from the University of Wisconsin Law School, his M.P.A. from the University of Wisconsin LaFollette Institute of Public Affairs, and his M.S. from the University of Washington School of Fisheries. Jon received his Ph.D. in Wildlife Science in 2008 from the University of Washington College of Forest Resources where he focused on the Endangered Species Act and Federal Hatchery Law. Jon works in the Conservation Biology Division where he serves as the main point of contact for ESA hatchery issues. This involves understanding hatchery effects and risk/benefit assessment. He also works with ESA permitting, both Section 4 and Section 10, and ESA listing. He was a member of the Biological Review Team for Pacific Herring in 2005. In the Columbia
Basin, he serves on RME workgroup for the FCRPS ESA Section 7 Biological Opinion. Current research will incorporate quantitative genetics and selection using model organisms.

Prof. Nicole Schabus earned her business and law degrees from the University of Vienna, while also studying at the Universities of Sydney and Ottawa. She was part of the European Union funded project on multicultural autonomy: a necessary condition for sustainable development in Latin America, bringing together researchers and universities from across Europe and Latin America. Nicole has been practicing law in British Columbia for over 10 years, in the fields of constitutional, criminal, aboriginal, and environmental law. She represented Indigenous Peoples, including in the Cohen Commission on the Decline of the Fraser River Sockeye Salmon and recently as part of the legal team for the Union of BC Indian Chiefs, Secwepemc and Okanagan Intervenors in the Tshilhqot’in case before the Supreme Court of Canada. Nicole has also assisted with the preparation of submissions to numerous UN Human Rights bodies for organizations with consultative status before the United Nations. She drafted amicus curiae submissions for Indigenous Peoples that were accepted by the World Trade Organization and NAFTA international trade tribunals. She continues to volunteer for many indigenous organizations and foundations.

Dr. Shane Doyle is an enrolled member of the Apsaalooke (Crow) tribe, and is passionate about his homeland. Combining his own experiences as an American Indian growing up on a reservation with his interests in history, archaeology, education, and contemporary issues, Shane’s personal and academic pursuits have merged to make him a powerful storyteller with unique insight into the powers that have shaped our communities. Shane works extensively with indigenous groups both within and outside of North America and has gained interesting insights into the commonalities of tribal cultures. His favorite subjects of study include the role of family and community in indigenous perspectives as well as the important influences of oral tradition. Shane has a M.S. in Native American Studies and a Ph.D. in Education Curriculum and Instruction from Montana State University.

Mr. Loren BirdRattler currently serves as the Project Manager for the development of the Blackfeet Tribe’s Agriculture Resource Management Plan (ARMP), a plan that will create policy in agriculture resource, land, conservation, holistic management practice, and water resource management, as well as agriculture and livestock regulation for both the Blackfeet Tribe and the United States governments. Loren has more than fifteen years of public and private sector experience in organizational development, strategic planning, policy development, project management, and civic engagement. He is a former National Field Director for the Native Vote Initiative for the National Congress of American Indians, a Public Program Specialist for the Smithsonian Institution’s National Museum of the American Indian, both in Washington, DC. He was the inaugural Executive Director for two non-profits, Western Native Voice and Montana Native Vote both based in Billings, MT. He was also a program manager for the United States Department of Defense’s Native American Lands Environmental Mitigation Program based in Arlington, VA for Keres Consulting.

Mr. David Gooderham’s professional background is law. He practiced in civil litigation in Vancouver B.C. for 35 years, between 1975 and 2012, when he retired from practice. His interest is the adequacy of the process followed by the Kinder Morgan assessment, the sources of evidence it considered, how the evidence was selected, whether the evidence was subject to any questioning or cross-examination, the way the assessment framed the questions it asked, the answers provided by the assessment – and the questions it did not ask. His specific focus is on the sources of information available to Canadians from our own governments (the Federal Government and our various provincial governments) about the current growth of greenhouse gas emissions in Canada, the future path of our emissions over the next fifteen to twenty-five years, the impact of rising emissions levels, and the steps we are taking to respond.
The Public Land & Resources Law Review & the University Calgary Faculty of Law thanks you for attending this year’s Public Land Law Conference.

Enjoy Montana!