

Spain's New Water Culture

"In Spain there were 500 towns inundated by dams. The people were thrown out of their valleys and so much for their right to property. I believe that these are not forms of 'clean energy.' The Supreme Court invalidated the expropriation of these properties . . . as it used the 'public force' for private purposes. This is what the Court said, not me." -Pedro Brufao, LLM, Tulane 1998, interview, **The Voice of Galicia**, September 13, 2004

Water management in Spain is as simple as this: dams, paid for by public taxes, to catch as much surface water as possible. Water not captured, water that reaches the sea, is wasted. When you ask how "to solve the water problem for good", the answer is: build another dam.

Starting in the early 1990s, another idea appeared: a new "water culture" promoted by a group of professors of hydrogeology, environmental law, water economics, sociology, and journalism. It rose in opposition to wave of concrete put in the national budget to connect the "wet and green Spain" with the "dry and brown Spain." Green Spain would send its water south for golf courses and condominiums on the Mediterranean coast. The National



Protestors in the streets of Madrid in 2003 call for a change in the country's water policy. The banner reads "No To This Hydrological Plan"

Hydrological Plan (NHP) proposed to build 200 new large dams and 13 aqueducts from North to South, West to East, in a country similar in surface, population, agriculture and climate to California. Think: Cadillac Desert. All this in a country where nearly 95 % of the rivers

have already been destroyed by dams, where pollution has taken its toll, where water authorities

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Lords of the Ring

Notes from New Zealand

In July and August Professor Houck presented a course in Comparative Environmental Law at the University of Auckland, and several lectures at Canterbury College in Christchurch, New Zealand. He brings back these notes.

You know that you are in a different environment when the headline of the national newspaper declares that the Prime Minister's motorcade was caught speeding. It was the full front page. The radio talk shows carried little else for three days. The PM was admonished from all sides, by friend and foe alike. She was called "Helen of Troy" and "Helen from Texas." How dare she think that she was above the law? It's not as if there were no other national

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TLS Clinic Victory in St. Tammany Parish

"Judge Fells Timber Branch II Permit"

- Headline, The Times Picayune, August 12, 2004

Louisiana loses 24 square miles of coastal wetlands a year, or roughly one football field every 38 minutes. Cities like New Orleans are increasingly vulnerable to hurricanes and flooding. As wetlands disappear, oil and gas pipelines become exposed and vulnerable in open water. Fisheries decline. Waterfowl decline. Economic impacts aside, the nation is losing an ecological treasure. Despite this crisis, the U.S. Army Corps of Engineers continues to issue permits for destruction of Louisiana's re-

maining wetlands without taking the hard look at environmental impacts required by the National Environmental Policy Act.

Against this backdrop, the Tulane Environmental Law Clinic filed a lawsuit on behalf of three St. Tammany residents in the Eastern District of Louisiana. The suit challenged the Corps' issuance of a Clean Water Act section 404 permit allowing the destruction of 31 acres of

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Environmental Law Clinic News

A Victory on Pollutant Trading

Louisiana, like several states, allows companies to trade in “emission reduction credits” to offset—and therefore justify—new air emissions. But in this context, the Clean Air Act does not allow trades of apples for oranges. Thus, EPA has acknowledged in the Federal Register “only reductions of particulates can be substituted for increases of particulates, reductions of VOCs [i.e., volatile organic compounds] for increases in VOCs.” In fact, “[t]here are no provisions addressing inter-pollutant trading in the CAA or EPA regulations” and EPA admits that “a strict interpretation of the Act would prohibit air districts from allowing this practice at all.”

So how did EPA justify approving an inter-pollutant trading plan for Louisiana’s Baton Rouge area? Easy! The Department of Justice simply announced that its client agency had determined that VOCs and nitrogen

oxides are not “pollutants” under relevant sections of the Act.

After the Clinic filed an opening brief in a Fifth Circuit appeal on behalf of the Louisiana Environmental Action Network, EPA quickly backed down.



Although not formally abandoning its pollutants-aren’t-pollutants argument, the agency asked the court to vacate its approval of Louisiana’s plan. The State has now submitted a new plan, which drops inter-pollutant trading.

A Fifth Circuit Clean Air Win

On behalf of the Louisiana Environmental Action Network (LEAN), the Tulane Environmental Law Clinic won a Clean Air Act victory in the Fifth Circuit in *LEAN v. EPA*, (No. 02-60991 (5th Cir. Sept. 8, 2004)). There were three major issues in this case. The first was whether EPA could legally extend Louisiana’s deadline for meeting the health-protection standard for ozone in the five-parish Baton Rouge area. Having lost similar cases in four circuits (including the Fifth), EPA voluntarily requested a remand after LEAN filed its petition. The second issue, interpollutant trading, is discussed above in this article. The court’s opinion was about the third issue: Whether a 1998 pollution reduction from outside of the Baton Rouge area could qualify as a “contingency measure” to protect the public in the face of the area’s failure to meet the November 15, 1999

deadline for attaining the ozone standard. The Court could “find no record support to demonstrate that reductions outside the Baton Rouge area can qualify as a contingency measure” and vacated EPA’s ap-

proval. The next step is for Louisiana and EPA to require the approximately 5.7 tons per day of actual emission reductions that the Act mandates.

New Outreach Coordinator

Christine Harvey joined the Clinic in June 2004 as Community Outreach Director. She has a Bachelor of Arts degree in history from Loyola University in New Orleans and attended graduate school at Louisiana State University, where she studied mass communication and served as editor-in-chief of *The Reveille*, LSU’s student-run newspaper. Prior to joining the Clinic’s staff, she spent four years



as a newspaper reporter, first at *The Sun Herald* in Biloxi, Miss., and most

recently at *The Times of Northwest Indiana* in Munster. Ms. Harvey lives Uptown with her husband, dog and cat.

Tulane Environmental Law News

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This issue features articles by Tulane Law School alumnae who are putting environmental law to new and powerful uses around the globe. They are but the tip of the iceberg of more than 1200 Tulane alums who specialized in environmental law here and who are now in practice. To them, including many of you, can be added the similar grads and activities of our colleague schools in environmental law. It is a heartening prospect.

ELS officers 2004-05

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A New Citizen's Guide to Environmental Protection – Louisiana Style

With a little information, ordinary citizens can take big steps to participate in—and influence—local, state and federal environmental decisions. So when TLS formed the Environmental Law Clinic, one of its first projects was to develop a “Citizen’s Guide to Environmental Activism in Louisiana.” Published in 1991, the Guide has been in demand for years. But with the Clinic up to its neck in litigation, finding time to update the Citizen’s Guide has been difficult. In 2004, however, the Clinic released a new Citizen’s Guide to Environmental Protection in Louisiana. The goal to keep things simple without oversimplifying. The Clinic helps make access to the courts a feasible tool for people trying to protect their communities from environmental degradation. But clients remain responsible for finding the best mix of tools to accomplish their goals. To do this effectively requires information. We hope the new Citizen’s Guide will help.

For copies of the guide, please visit the Environmental Law Clinic web site at www.law.tulane.edu/~telc/.

TULANE ENVIRONMENTAL LAW SOCIETY – FALL CALENDAR

August 31 – Conference Planning
September 1 – Welcome Meeting
September 5 – City Ride
September 10 – Welcome Party
September 12 – Algiers Bike Trip
September 12 – New Orleans Transportation Planning Meeting
September 14 – Conf. Planning
September 18 – Beach Cleanup

September 25 – Canoe Trip, Wolf River
September 28 – Conf. Planning
October 9 – Bike Trip, Lakefront
October 12 – Conf. Planning
October 16 – Service Activity
October 26 – Conf. Planning
November 6 – Overnight Canoe Trip, Wolf River



Another perfect pyramid September 2004 on Wolf River

Clinic Victory (From page 1)

wetlands without preparing an Environmental Impact Statement. The permit authorized a developer to fill wetlands to build a subdivision—the first in a three-phase project that would ultimately impact 91 acres of wetlands. A very familiar scenario in wetlands-NEPA cases: piecemealing.

In August, the plaintiffs, represented by Student Attorney Joshua Borsellino and Clinical Instructor Karla Raettig, won an important victory when the court granted this motion for summary judgment and enjoined the permit until the Corps prepares an EIS. Judge Zainey's ruling advances the law on two issues—mitigation and cumulative impacts.

With respect to mitigation, the Corps argued that "mitigation measures" reduced harm from the project to the point where an Environmental Impact Statement was not necessary. It relied on the applicant's agreement

to purchase credits in a mitigation bank and unspecified St. Tammany ordinances to offset those impacts. The trial judge, however, concluded that the Corps failed "to employ any analysis or gather any data" with respect to the mitigation. Because of this failure

"the Court is left to assume that the Corps based its decision on speculation that the impacts would be successfully mitigated" and thus the Corps' decision was arbitrary and capricious.

In addition, the court found that the Corps failed to study the cumulative im-

pacts of all three phases of the project as well as the cumulative impacts resulting from previous section 404 permits issued by the Corps. Judge Zainey held that "[t]he record blaringly suggests that the sole reason that Phases II and III were eliminated from the permitting application was to facilitate the issuance of the permit so that the project could get underway. . . . In short, the other two phases are 'rea-

sonably foreseeable' and the project represents a 'piecemealing approach for implementing the totality of the Timber Branch II project.'" In addition, the court found that the Corps had examined the project in a "vacuum." He noted that: "In light of the already 72 permits issue[d] within a 3 mile radius of the project site, and the continued rapid growth and urbanization in St. Tammany Parish, the Corps acted arbitrarily or capriciously in concluding that the cumulative effects of the project were sufficiently mitigated."

Louisiana's wetlands have been dying a death by a thousand cuts. While this decision alone is not enough to stop the damage, it is a step in the right direction.

— **Karla Raettig**, Supervising Attorney, TLS Clinic



Environment Advisor Joins Career Development Office

Russa Kittridge comes to our Career Development Office from the University of Oregon's Center for Academic Learning Services, where she was an advisor and instructor. A graduate of the Oregon School of Law (focus on environmental and natural resources law, dispute resolution) she also worked as a fundraiser for the Western Environmental Law Center, formerly Oregon's clinic.



CDO is offering several new resources this year for students interested in environmental law careers. This summer, Russa worked with Drew deGraauw, 2L, to develop a booklet that provides students with a general overview of the opportunities in environmental law and guidance in their job searches. The booklet includes personal narratives from Tulane students, alumni, and professors who have worked in the field.

A second resource, a revised environmental law directory, will also be available to students and alumni in Fall of 2004 via the CDO website. This online database will provide contact information, directory listings, and employer recruitment history with Tulane. We're glad to have Russa join us, and hope to continue to open doors for our grads in environmental law.

Unnamed Graduate Publishes Book

The following notice, abridged, was recently received from an LLM graduate, also the first attorney supervisor in the Tulane Environmental Law Clinic.

"Former Tulane Environmental Law Fellow, writing anonymously under a pen name, publishes a novel set in Louisiana entitled "With Malicious Intent." The book chronicles New Orleans environmental lawyer Rebecca Boudreaux, whose life became substantially more complicated because of the case that her public interest law firm filed on behalf of citizens living in the Cancer Alley area of Louisiana.

Her efforts are hampered when inside informants keep dying, her clients are terrorized, her key witness is forced to hide in a run down shack in the bayou, and her own life is at risk.

When Rebecca collapses in the courtroom, her boss, steps in to try the case in her place. The drama climaxes as he exposes whether Rebecca's best friend, her steamy new love interest, the directors of a "recycling" company, or someone else as been acting . . . With Malicious Intent.

For more information, see the web site at www.mtkingsley.com. A portion of the proceeds from the sale of this book will go to the Louisiana Environmental Action Network (LEAN)."

New Courses for 2004-05

Law & Economics

Taught by Professor **Jonathan Nash** this fall, this course introduces students to the development of legal policy and analysis using economic theory. Examples feature environmental law, property, contracts, and torts and include the choice between property and liability rules, the application of game theory, questions of voting structures and power, and the use of economic incentives as a regulatory tool. Professor Nash says “environmentalists too often dismiss economic approaches as environmentally unfriendly.” In his view, economics often provides a justification for environmental regulation. In addition, “economics can help us to design more effective and efficient regulatory approaches, such as marketable pollution permit systems.”

Environmental Criminal Law

Shaun Clarke, an attorney at the law firm of Liskow & Lewis, is teaching a mini-course this fall on environmental criminal enforcement, principally under federal law. Mr. Clarke’s course focuses on areas in which environmental criminal law differs from the larger realm of criminal law, including prosecutorial discretion, mental state requirements, ethical

issues in defense representation, corporate criminal liability, and federal sentencing guidelines. Students in the course address these issues from the perspective of prosecutor, investigator, defense attorney, and judge. In addition, students benefit from the perspectives of federal agents, prosecutors, and criminal defense attorneys who participate in selected classes.

Sustainable Energy Policy and Law

Co-taught by Associate Business School Professor **Charles Reith** and former Tulane Environmental Law Clinic Acting Director **Daria Diaz**, this course reviews policies and laws related to the transition from non-renewable fossil and nuclear energy to renewable energy. Closely related aspects of energy law such as distributed generation, conservation, and efficiency will also be addressed: a rather exceptional blend of technology, economics, policy and case law. Students will learn about generating, storing, and utilizing energy especially from renewable sources, and about the costs associated with each approach. A weekend field trip will be provided to renewable energy sites in South Louisiana.



Journal at Year 18

The Tulane Environmental Law Journal is entering its eighteenth year, and continues to be one of the top legal publications focused exclusively on environmental issues. Our winter issue will contain articles addressing: fallacies of the contemporary standing doctrine in environmental law, essential fish habitat under the Magnuson-Stevens Act, the role of the Supreme Court in shaping environmental law, and self-interest problems unique to international environmental law.

The spring 2005 Symposium will focus on: “CERCLA at 25: A Retrospective, Introspective, and Prospective Look at the Comprehensive Environmental Response, Compensation and Liability Act at its 25th Anniversary.” This issue will address the successes and failures of CERCLA, and look at suggestions for improvement including articles on: (1) are the 2001 Brownfields Amendments a better direction for CERCLA?; (2) how do we strike an appropriate balance between providing uniform protections and responding to local priorities under CERCLA; (3) how are environmental justice goals being incorporated in the CERCLA site-specific decision-making process? (4) how does CERCLA compare to the European Union Liability Directive?; (5) is CERCLA influencing international laws or other nations’ hazardous waste liability systems?; and (6) what is the impact of the declining appropriations to the Superfund and the removal of the Superfund tax – is CERCLA dying?

For more information, or to subscribe, contact TELJ at 504-862-5309, lbecnel@law.tulane.edu

Under Ethiopian Skies

Stefano La Tella attended the Tulane LLM program as an exchange student in 2000-1. He went on to serve as a legal advisor to UNDP in Ethiopia.

Developing countries have a distinct stake in environmental protection. The life cycle of a specific plant may be interesting for a European agronomist; it can spell prosperity or starvation for a household in Tigray. Working in a country such as Ethiopia offers a completely different reality. It allows one to see environmental protection as a necessity, intrinsic to survival.

Ethiopia holds enormous wealth in natural resources. It harbors a large number of endemic species, a direct consequence of the diversity in altitudes, temperatures, weather patterns, and soil composition. This wealth has been degraded enormously in the past century and is now at great risk, species numbers dwindling while human populations are increasing and desertification steals away soil from the land.

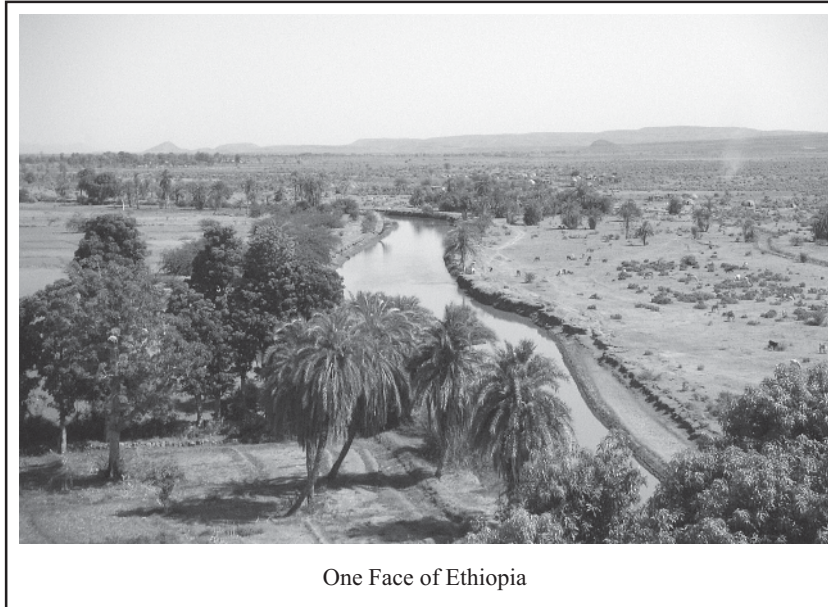
Several recent programs have surfaced to reverse this tide. They include the Ethiopian Sustainable Development Strategy Programme, the Water Sector Development Programme, and a number of policies regarding energy and governance. Big gaps still remain, however, especially in terms of land use policy and general environmental legislation. These gaps are critical: 85% of the population makes its living directly from the soil.

Within the strategic plan, a first step is the inclusion of language affirming the need to consider environmental conservation in all aspects of poverty reduction programs. While this remains, of course, in-

sufficient, and has had small influence on the actual architecture of these programs, it nonetheless shows a growing awareness of the importance of a healthy environment. Indeed, the right of every citizen to live in a clean and healthy environment is embodied in the Ethiopian Constitution. The challenge, of course, is in what comes next.

In addition to a few general policies, there are currently two "Proclamations" related to the environ-

ment, both adopted in December 2002. The first relates to pollution control measures, and provides a structure, to be completed and consolidated through specific regulations from the Environmental Protection Authority (EPA). No such regulations have been



One Face of Ethiopia

developed to this day. On a positive note, the concept of citizen standing in this legislation is wide open. There is no requirement that vested interest be shown by the plaintiff, which may lead to direct pressure for implementation of the law. The second proclamation refers to the need for environmental impact assessments, a mechanism that has brought about significant improvements in many developing countries. No regulations have consolidated the legislation here either, however, although the EPA is actively working on them. Meanwhile, projects continue to proceed without any form of environmental impact assessment. Given these shortcomings, environmental review and protection stem, rather, from projects funded by international organizations and bilateral donors.

The most immediate challenge Ethiopia faces today is the frightening rate of deforestation, which has left little more than 3 percent of the country's territory

as wooded land, from a cover estimated to have been somewhere around 40 percent in 1900. The deforestation is driven by the need for household fuel and pasture. A population boom over the past half-century has accelerated the demand for wood and food, and more forests fall. More lands degrade. Ethiopia loses an amazing 1.5 to 1.9 billion tons of soil a year. Dense cattle populations intensify the pressure on the land, and subsequent overgrazing in fragile areas contributes to the desertification. Farmlands wither, and farmers then spread to other, also fragile, lands.

These two problems are aggravated by the land tenure system in Ethiopia. Land is owned by the federal government, and is available in the form of extended loans, but mostly is simply occupied by the local people. In the rural areas (which comprise 85% of the population) land tenure can be reshuffled at the lowest level of administration, and there is very little to be done to retain a piece of land. With no right of ownership, there is no mechanism to ensure that trees within one's dwelling area are not cut down by others, nor are farmlands harvested in a sustainable manner. Even farmers who may have access to micro finance in order to improve the productivity of their land fail to invest, because of the very real fear that they may be deprived of their land at any moment and see their investment crumble.

While the issue of land tenure has been brought to the attention of the government of Ethiopia many times, it has received very little heed. The government expresses the fear that private land ownership would cause massive rural exodus as soon as the next drought occurs, farmers selling off their land to avoid starvation, and moving to urban centers in large numbers. Whether this fear is well grounded is difficult to ascertain; it is certain, however, that with the current system of land tenure, the soil and forest cover of Ethiopia are steadily declining and the damage will be irreversible.

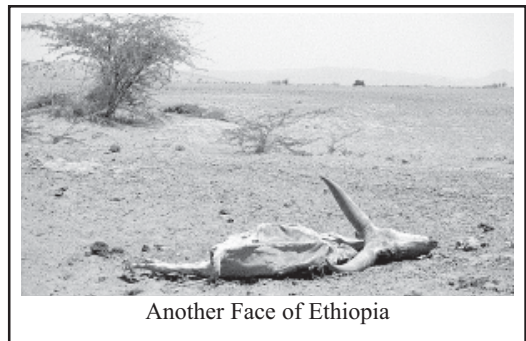
Above all of these issues looms a new and larger problem, increasingly felt in all agriculture-based, developing countries. The temperatures in Ethiopia have been changing rapidly over the last few decades. This has shifted rainfall patterns, triggered the expansion of invasive species and disrupted the stability of ecosystems. Ethiopia hosts ten different climatic types, in-

creasing the need for infrastructure and for diversified adaptation plans.

On the plus side, efforts are being made in order to mitigate the contribution of Ethiopia to climate change. Hydropower is a major source of electricity in the country, gifted with enormous water resources. In many rural areas, solar energy is a very viable alternative, for villages and households disconnected from the power grid, and a serious project is under consideration by UNDP, largely inspired by the Barefoot College approach in India (www.barefootcollege.org). It will attempt to reduce deforestation by providing electric lighting, as well as allowing for night study and income generating activities, hopefully reducing pressure on the land and diversifying occupations. One of its important components is the development of local knowledge on the upkeep and assembly of solar panels and lanterns, in order to render the technology's use sustainable and promote its spread throughout the country. A number of local and international private companies are already involved in solar energy, which can be extremely useful and efficient - especially in countries with electrical grids as limited as Ethiopia.

This is a critical moment for Ethiopia's environment, and it is crucial that more effort be directed to the problems of the poorest and least developed countries in the world. We are losing human lives every day, and

jeopardizing the very existence of species that are found



Another Face of Ethiopia

nowhere else on earth. The potential of countries like Ethiopia is enormous, simply in terms of water resources and fertile land. They could also act as laboratories for solar energy and other advances that meet higher resistance in the developed world. Such is the peril of this country, and its promise.

EPA's web site provides a good reference regarding solar energy - www.epa.gov.et

TLS Alum Starts New Certificate in Environmental Regulations and Permits at Universidad de Puerto Rico

After more than five years in private practice, I was frustrated to see the regulated community involved in more or less the same type of noncompliance situations with regulators. I did not mind billing for the same problems over and over, but a small island like Puerto Rico with limited resources cannot afford this approach. An architect student of mine told me, "I feel like all we do is remedial planning".

I realized then that there was a need to educate the regulated community. Yes, we have had expensive seminars at our world-famous beach resorts (lunch and cocktails included) but they were sporadic, with few quality control and left the attendees wanting more. On the other hand, traditional university programs were more theoretical than focused on environmental practice.

My professors at Tulane have always been mentors because they were also involved in applying the law. With this in mind, I decided to venture into teaching and filling the compliance gap.

I designed and proposed to the University of Puerto Rico a Certificate in Environmental Regulations and Permits for the actual players in the regulated community—architects, engineers, planners, biologists and, last but not least, lawyers. Our students are active players in the learning process and the professors become the facilitators, if not students themselves.

Over the last three years, we have trained over 500 students, including government cabinet members and well-

known environmental consultants. Our students have grown professionally and personally. They have obtained promotions and even changed jobs. Some of them have continued graduate studies. It is gratifying to see students with a new vision for their lives.



Over the short term, I hope that we will contribute to better environmental governance in Puerto Rico. Obtaining and complying with a permit will be an accepted task. The project-by-project learning curve will be significantly shortened. On a long term basis, I think I certainly hope that the program will infuse

more of an environmental ethic into Puerto Rico.

The program has included field trips to Cuba and Costa Rica, and one story comes from a recent trip to Cuba. It was the first day of the trip and we were leaving our hotel in Havana for our first lecture at the National Museum of Natural History. At 8:45 AM we were still missing one student on the bus who has overslept. We had no alternative but to tell bus driver to leave the hotel. We were pulling out from hotel when the driver shouted, "I see in the mirror a heavy woman with her tongue out running after us!" We all laughed. We turned around ... and there was our missing student. Everyone applauded her heroic stamina as she had chased us five blocks down a crowded street in the already-tropical heat of the day.

I'd like to think it was because of the quality of our program.

- David W. Román Vargas, LL.M., Tulane 1994

Spain's New Water Culture Continued from page 1

("Confederaciones Hidrográficas") have no idea of how much water users are actually withdrawing, and where water efficiency in agriculture is about zero. Until recently city governments could not even take part in decisions made by Confederaciones Hidrográficas.

Secrecy, lack of information, and obstacles to transparency were (and are) the rule of water management. The old water culture added sayings to the Spanish language: "Valle veo, presa quiero" (When I see a valley, I want a reservoir), and "Primero hacemos una presa y luego veremos para qué sirve" (first we build a dam, then we ask what for). New Water Culture economists such as Pedro Arrojo (Goldman Award 2003) have played an important part in demonstrating how inefficiency, pork barrel politics, corruption and mismanagement have been the rule.

The Plan of the 90's was defeated, but the new conservative government that took office (and had previously opposed the Plan) published a new version featuring a new transfer from the Ebro river to the Mediterranean shore of a thousand cubic hectometres per year. More ominously, 120 new large dams and 880 public works were added in the National Hydrological Plan Act of 2001.

The struggle for the new water culture was joined in the Ebro basin. The Pyrenees range had been long dammed for hydropower and irrigation projects. Starting in the 19th century, some 200 towns had been sacrificed, displacing their inhabitants without just compensation. More dams meant the social and natural death of these northern valleys, already submerged in a deep economic crisis. Spain holds the world record in dams per square kilometer and per million people (1,200 = thirty large dams per million people in a country of forty million), and,

Spain's New Water Culture Continued from previous page

nationwide, 500 towns have been erased for good. Contemporary literature describing this situation includes works by Miguel Delibes, Ramón J. Sender, Julio Llamazares, Tomás Val, and Rafael Sánchez Ferlosio. There was, in consequence, a general climate in the valleys against the new dams and transfers after decades of silence under General Franco's rule. But the Confederaciones Hidrográficas behavior did not change much after democracy returned to the county, and riots, demonstrations, and strikes were common.

What President Aznar's administration did not expect was the reaction of the people of other parts of Spain; Castilla, Andalusia, Navarra, Basque Country, and Galicia, were all targeted by the same wave of concrete. Soon, coalitions and groups were formed and coordinated to oppose NHP both in Madrid and in Brussels. For the last eight years the struggle to retire the NHP has put together farmers, academia, environmentalists, sport anglers, commercial fishermen, housewives (very important in places like Catalonia and Aragón), clerks, students, and many other people who began to think that a river did not belong behind concrete or in a ditch. Their natural rivers represented social memory, personal well-being, scenery recreation, and a better quality of life.

The breakthrough came with the victory of the Socialist Party in 2004, which derogated, in April, the Ebro river transfer and put on hold many of the large dams foreseen by the former administration. Think: the water project "hit list" of the Carter Administration.

I, personally, started to get involved in river conservation through fly-fishing. Soon I was designing trout and salmon river recovery programs, then opposing hydropower projects, then logging, then mining and pollution, then instream flows, then water law, then endangered species and flawed environmental impact statements, then dam decommissioning, then water corruption...and so on. Today, our organization is called "Ríos con Vida" ("Living Rivers", www.riosconvida.org).

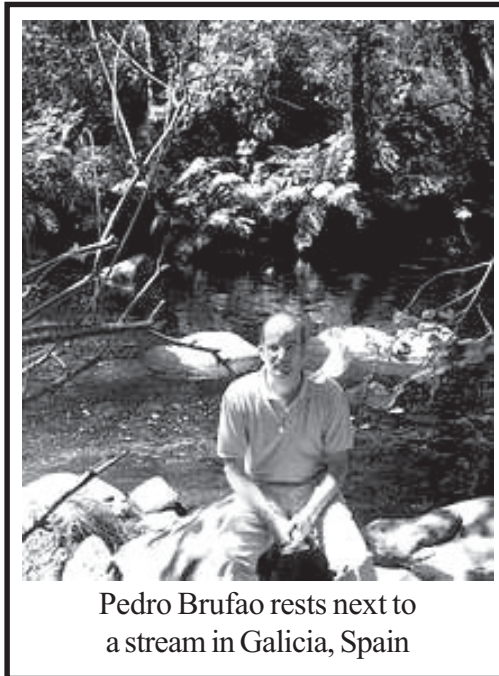
My first steps were to protect the best tracts of trout and salmon rivers by opposing restocking with farm-raised fish that contributes to the "genetic pollution" of

the stock. I worked to stop a number of small dam chains, one after another, to be erected in some streams and rivers now eligible for protection under the just-passed wild and scenic rivers program. However, in Galicia, "the one-thousand rivers country", 300 new dams remain under study. In Asturias, a coalition of rural development groups, environmentalists, scientists, and fishermen managed to stop 54 dam projects on a single river whose basin is home to wolfs, bears, otters, Atlantic salmon, and other endangered species. Our battle has been joined.

During my stay at Tulane Law School, I paid special attention to the regime of endangered species, water and agricultural law. While writing my doctoral thesis, I practiced as a legal assistant to the Ministry of the Environment, where I had the opportunity to study how Public Administration works, and to gather vital information for the campaigns to come. I then joined the Spanish branch of WWF, for which I drew up a report on alternatives to water policies, the first of which was to "obey the law." Spain suffers from a chronic disease: what is published as law is rarely fulfilled. I began to study the problems of corruption, irregularities and the efforts to combat them. In 2003 I published my findings in a book, "Aguas Limpias, Manos Limpias: Corrupción e Irregularidades en la Gestión del Agua en España" (Clean Waters, Clean Hands: Corruption and Irregularities in Spain's Water

Management- www.unizar.es/fnca). The book, which analyzes the costs, benefits, politics and corruption of more than fifty water projects, demonstrates how water continues to be treated as a good in the hands of a few, no matter how much it is declared to be part of the public domain. The book was formally presented at the National Parliament and to the European Commission in Brussels. Last January, the Commission derogated several of these projects. The "New Water Culture" is taking hold.

-**Pedro Brufao**, Professor of Administrative Law. Universidad de Extremadura, Spain J.D. Universidad Complutense de Madrid. 1994. LL.M. in Environmental & Energy Law. Tulane University Law School. 1998. Ph.D. Universidad Carlos III de Madrid. 2002.



Pedro Brufao rests next to a stream in Galicia, Spain

Institute Will Co-Host ASIL's 8th International Wildlife Law Conference

The American Society of International Law's section on International Wildlife Law will join Tulane's Institute for Environmental Law and Policy to co-host the Eighth International Wildlife Law Conference at Tulane Law School on **19 and 20 November 2004**. This year's conference will focus on **Ocean Wildlife**. A copy of the preliminary program is below, and registration information can be obtained at www.law.tulane.edu/enlaw

Panel A – Cetaceans

Friday 10:00 am – 12:00 pm

Y. Iino, D. Goodman & J. Morishita, Institute of Cetacean Research, Japan, What makes the IWC dysfunctional?
Halvard P. Johansen, Deputy Director General Royal Ministry of Fisheries, Oslo, Norway, Minke whales in the North Atlantic: Is there a realistic alternative to the IWC?
Kitty Block, Special Counsel, HSUS, UN Treaties Department, Evolving Nature of Cetacean Agreements
Wil Burns, Ass't Prof., Dept of Env't'l Studies, University of Redlands & Editor, Journal of Int'l Wildlife Law & Policy, Agreement on Conservation of Cetaceans of the Black Sea, Mediterranean Sea, and Contiguous Atlantic

Panel C – Int'l Species Conservation Frameworks

Friday 2:30 – 6:00

Amanda Vincent, Director, Project Seahorse, Seahorse Conservation and CITES
Shilpa Rajkumar & Sali J. Bache, U. of Wollongong, Australia, The Forgotten Marine Mammal: Conservation and Management of Pinnipeds
William O. Barnhill, III, Geo-Marine, Inc., Plano, TX, Are international regimes effective at protecting manatees?
Joel T. Heinen, Chair, Department of Environmental Studies, Florida Int'l U., RAMSAR in Action
Sudhir K. Chopra, Visiting Fellow, University of Cambridge, The Convention for the Conservation of Antarctic Marine Living Resources in the 21st Century
David Godfrey, Exec. Dir., Caribbean Conservation Corp. and Sea Turtle Survival League, Gainesville, Florida, Conservation of Sea Turtles under International Regimes

Panel E – Invasive Species

Saturday 11:30 pm – 12:30 pm

Jeremy Firestone, University of Delaware, Evaluating Risk of Species Introduction to Facilitate Implementation of the New Global Ballast Water Convention and Conserve Marine Biodiversity
Bivan Parnaik, US Coast Guard, The Coast Guard's Approach to Controlling Invasive Species

Panel B – Env't'l Governance in International Waters

Friday 1:00 pm – 2:30 pm

Gunther Handl, Eberhard Deutsch Professor of International Law, Tulane University School of Law, New Orleans, Marine Protected Areas on the High Seas
Richard Caddell, Senior Lecturer and Director of the Baltic Legal Research Centre, International University, Tallinn, ESTONIA, Driftnets and Cetaceans: The Role of EU Law in By-Catch Mitigation
Eric Dannenmaier, Director, Tulane Environmental Law Institute, Tulane University School of Law, New Orleans, Deep Democracy: Public Access to Decision-Making Concerning Wildlife in International Waters

Panel D – Ocean Noise

Saturday 9:00 am – 11:00 am

Jim Cummings, Acoustic Ecology Institute, Santa Fe, New Mexico, Moderator
David Cottingham, Director, US Marine Mammal Commission, Managing in the Face of Uncertainties
Cara Horowitz, National Resources Defense Council, Ocean Protection and Military Readiness: Lessons for Undersea Noise Regulation
Maya Tolstoy, Lamont-Doherty Earth Observatory, Columbia University, A Research Perspective on Ocean Noise Regulation
Michael Stocker, Michael Stocker Associates, Ocean Bioacoustics and Scalable Noise Criteria

Panel F – Coastal Conservation And Management

Saturday 1:30 – 3:00

SA Ebbin, AH Hakon, AK Sydnese, IDGEC/Eastern Connecticut State University, University of Tromsø, University of Tromsø, The Performance of the Exclusive Economic Zone: Implications for Governance of Marine Living Resources,
Michael Vincent McGinnis, Acting Director, Ocean & Coastal Policy Research Center, The Politics of Marine Ecosystem Management and Planning: The Case of the Southern California Bight



Police and SWAT teams establish the "security perimeter" within which Foreign Trade Ministers met during last year's FTAA negotiations in Miami. The Institute is working with partner organizations to bring non state actors into this perimeter to discuss the details of trade policy in a more open atmosphere.

INSTITUTE AGENDA: 2004-05

Inter-American Presidential Summits

The Institute is convening environmental organizations and advocates from throughout the Americas to debate regional environmental priorities and provide input into the upcoming Presidential Summit scheduled for Buenos Aires, Argentina in 2005. The Summit convenes Heads of State from 34 countries in the Western Hemisphere to discuss priorities and a plan of action for regional institutions. The environmental dialogue is part of a broader effort being taken in coordination with the **Organization of American States** Office of Summit Follow-up to assure that citizens have greater input into the process.

The Access Initiative – US

The Institute will be working with **World Resources Institute** and other environmental organizations in the United States to produce case studies on public access to environmental information, decision-making about the environment and access to justice at a state and federal level. The studies will follow up on pilot worked in California and Ohio that was completed and published in early 2004.

Environmental Security & Conflict

The Institute continues to work with the **Foundation for Environmental Security and Sustainability** on a Congressionally mandated study of how environmental risks and conflict vulnerability might affect US national security. As part of this ongoing work, case studies are being conducted in Mexico, the Dominican Republic and in Uganda over the coming year.



Tulane student Carlos Perez-Brito interviews two community leaders who successfully challenged the expropriation of their land to build the world's second largest airport near Mexico City. The fieldwork is part of the Institute's project on Environmental Security and Governance - and involved an inter-disciplinary team from TLS and other graduate schools at Tulane.

Trade & Participation

The North American Agreement for Environment Cooperation (the "Environmental Side Agreement" signed as part of NAFTA) celebrated its first ten years in 2004, and the Institute was asked to prepare an internal report for the Ten Year Review Advisory Committee on the effectiveness of citizen advisory committees

during the first ten years. This work is part of a larger Institute focus on public access to international trade policy-making, which has included efforts to examine and strengthen public participation in the negotiations for a Free Trade Area of the Americas, and efforts to examine the environmental impact of trade policies in Central and South America.

10th Annual Conference Set for April 1-2, 2005 *Law, Science & Public Interest*

Planning has begun for the 10th Annual Tulane Environmental Law Conference in New Orleans. The event, co-hosted by the Environmental Law Society and Tulane's Institute for Environmental Law and Policy, draws 200 plus participants from academia, law firms, business and advocacy groups, and the general public from around the Gulf Coast. This year, plans are being developed jointly by the student coordinators and members of the environmental community from throughout the Gulf Coast region.

The Institute's Program Coordinator for the past few years, Kathy Harrison, has joined the ranks of Tulane first year law students – and we wish her well. The position was filled over the summer by a New Orleans native returning to her roots after three years working in France. **Loren Remsberg**, a 2001 graduate of Northwestern University in Chicago (and herself an aspiring future 1L) joined the Institute in August, and is already hard at work editing and organizing for the 2004-05 school year.



Notes From New Zealand (continued from page 1)

or international news to carry. But the big news was the outrage to this country's sense of ... propriety, measure, equality. We used to think that way in the USA. Then somebody composed "Hail to the Chief."

In fact, the PM was speeding to catch a plane after the rugby game between the All Blacks of New Zealand and the Australian Wallabies. The match was not for the faint of heart. It was played in a driving, winter rain with gale winds of the kind that had kept Captain Cook and his crew out of the Wellington straights for three weeks. There was not an empty seat in the stadium. The All Blacks won in a thriller when its Maori captain left a string of bodies behind him like sidewalk victims from a DWI and squirmed the ball over the try line in the closing minute of play. The following day's front page showed the face of an elderly fan, soaking wet, hair plastered to his forehead, holding a useless poncho around his neck that seemed to act as a collector of water, grinning widely: the headline read, "IT WAS WET, IT WAS COLD ... IT WAS WONDERFUL!"

Yes, New Zealand is green, green as grass, and that's part of the problem, mowed to the bone for sheep and cattle. It has trees as well, trees to the horizon, plantations of *Pinus Radiata*, a fast-growing, non-native pulpwood that covers more than twenty percent of the islands. The old photos of native forests are as remarkable as anything seen in the US; trees the size of towers and in shapes out of a Dr Seuss book lord over the landscape, shading dark understories, small birds scurrying. These deep woods are rare now and the fight is on over the management of what is left, the sustained-yielders versus the leave'em-aloners, and we could be in coastal Oregon.

With a twist: Rogernomics. Which was something like Reaganomics in the US circa 1980, but New Zealand did not limit itself to ending programs for the poor: Rogernomics went all the way into the teeth of corporate welfare as well, with dramatic results. In 1984, its economy flat under large, state-run and state-subsidized enterprises, the country adopted economic reforms that, among other things, ended government subsidies and abolished massive state agencies, including the department of forestry. Fancy that: no more Forest Service. Timber

Rogernomics went all the way into the teeth of corporate welfare as well. It abolished massive state agencies, including the department of forestry.

went to conservation reserves or was sold to private corporations, with predictable consequences. The reserves now offer some hope of restoring the native landscape. Private timber, increasingly under Japanese ownership, is into *Pinus Radiata* and little else. The conversation this summer was over those measures that might be required of the timber industry to qualify as "carbon sequestration sinks" under the Kyoto Protocol. The industry's proposal is for "shelter wood" areas that turn out to be leaving a single mature tree per clear-cut hectare. The games never change.

Environmental protection in New Zealand relied on a model so local and participatory that it is rarely seen in the US outside of, say, the Vermont Town Meeting. The Resource Management Act empowers local elected bodies to make all relevant decisions from construction sites to discharge permits. New Zealand only last year adopted its first national standards for any emissions, in this case air. Which means that local regulators are left to deal with developers and industry on an ad hoc, best professional judgment basis. Few local planners in the US can stand up to these pressures. Whether New Zealand can remains to be seen, but the papers carry stories of eutrophic lakes and smog. On the other hand, they also rant against the "dictatorial" actions of regional management authorities, the development community catching the wave of the US property rights movement. No accident. As I left, the "Business Roundtable" was sponsoring a series of lectures by Chicago's Richard Epstein, who views property rights as something that sit atop the Constitution, closer to God. The Business Roundtables love it. And of course, pay the honoraria.

The threat to biological diversity in New Zealand goes well beyond land use. The great extinctions began with the arrival of the Polynesians. Large flightless birds and then smaller ones were put into the food pot and their feathers into robes and hair-do's, and only when the easy pickings disappeared did the Maori turn to farming, property and endless war to maintain their claims. With them came rats and the extinction of native songbirds. There had been no land mammals of any kind; those that came with humans were smart and hungry, and they had a field day of their own. Then came the English who, as President Theodore Roosevelt, on another continent, observed, "had but one thought about a tree, and that was to cut it down". Tree giants went down in a similar, wanton

sprees in some cases beyond their own survival. The New Zealand settlers had yet another idea. They would import in as many bird species as possible from the English countryside, civilizing the wilderness. Pigeons, Starlings, English Sparrows, birds with lots of testosterone and few natural enemies found New Zealand species easy pickings, and drove native birds before them as if it was guns versus spears.

The New Zealand extinction list rivals that of Hawaii. Nearly half of its native birds are gone, and many remain only on isolated, protected islets the size of city parks where the predators have been trapped and poisoned out by the use of cyanide, 1040 devices. You get a different view of opossums over there. The only hope for the reintroduction of native species is predator control on an unimagined scale.

There is one native species that took the hit and survived and it is a marvel, the Tui. The size and look of a thin crow, it sports a flamboyant, white bow-tie of feathers and a voice from heaven, bubbling, chortling, imitating everything around it from songbirds to construction equipment, a one-bird Sounds of the Tropical Forests, all day long. It can make your day.

The cities are another matter. A good-looking city in New Zealand is hard to find, a good-looking new one even harder, and the cities are quite new. Christchurch, the imitation Oxford of South Island, looks more like a Victorian park surrounded by Denver. Auckland, described in the guidebooks as the “boisterous, bustling commercial center” of the country is certainly that. Think: Lower Manhattan, but all the buildings went up last year (save the ones going up now) and are painted red and gray and rival each other to block out the sun and steal their neighbors’ view of the harbor, until nobody can see the harbor from anywhere, just a wall of what looks like fifty-story kid’s toys. One building, with a round top angling off its roof in the shape of a half-opened can, is affectionately called The Commode.

There is a little park in downtown Auckland, walled in on two sides by buildings. It slopes down a hill, with a walkway, a plane tree, a ginkgo tree, a few benches, a

fountain, and next to the fountain an eye-catching mosaic of, of all things, the feminist leaders of New Zealand, the Suffragettes, clothed in Victorian bustles and ruffles and with faces that look real enough: determined, even fierce, formidable. The city’s proposal is to demolish the existing layout, including the mosaic frieze, remove the “unsightly “ trees, and put in something that, from the artist’s sketch, looks like an airport loading ramp with metal benches on the side. The artist is said to be internationally renowned.

The tragedy is that Auckland could have been the loveliest city on the planet. Its geography of small, volcanic hills run to and from huge, interior harbors, water and trees and hills ... to think: what could have

been, and probably until recently, was. The city has managed not only to wall off its most natural attractions, but to carve them up with an interior highway system that defies walking from A to B. The latest plans call for spending two and a half billion more on highways. There are no bike lanes. Frodo, can you please come back here and find the ring?



New Zealand’s Kiwi national symbol and endangered species

I return with these mental snapshots. Here is a place that feels like small town America when I was growing up, where there was no hate radio and people talked with each other and only waved flags on the fourth of July. Here is a country largely-spared the ravages of industrialization and coming to grips with the spoil of its resources in a sensible way. Here is a place from which a small flotilla of private sailors recently put to sea in thirty-foot dories and sailing ships to “block” the passage of large ships carrying nuclear wastes through the Tasmanian Sea. A futile gesture, to be sure. But maybe futile isn’t the only measuring stick around.

The day that the small ships left port the Prime Minister came to the dock to wish them off. She said, “Good sail, boys!”.

Imagine that.

- **Oliver Houck**, Professor of Law, TLS

Student Summers in Environmental Law

Ellen Addington, 3L, *Environmental Defense Center, Santa Barbara, CA.* This is my second non-profit for which I've worked and I highly recommend them to anyone who likes a casual, laid-back atmosphere and appreciates a dog-friendly office. During the summer I worked on oil and gas and endangered species issues, attended hearings, met with clients, and lived a few blocks from the beach. It was really inspiring to see all the beautiful places the Center had helped to protect.

Allison Cook, 3L, *U.S. DOJ Environmental and Natural Resources Division, Sacramento, CA.* Working in a field office of the ENRD was the best of all worlds - all the groundbreaking and interesting cases that the DOJ is faced with, along with a small, personable office where there was always an attorney ten steps away to answer a question and give me the low down on areas of law entirely new to me. The cases I was assigned to ranged from NHPA, NEPA and APA claims to issues on the Wild & Scenic Rivers Act and reclamation law. The best parts: when your boss represents Yosemite National Park, spending a weekend camping under Half Dome and El Capitan before a Monday morning hearing and realizing that all the reporters and cameras in front of the San Francisco courthouse were for the hearing on the case, for which I had just written part of the brief.

Monica Emilienburg, 2L, *Harris County Civil District Court, Houston, TX.* My work this summer centered around briefing judges on cases and researching areas of law, focused on the Clean Water Act. I had up-close experience with toxic tort litigation in a trial which lasted over three weeks. After an introduction to the vastness that is the CWA, I realized that so much is left to be done on the government's behalf, as well as on the part of Corporate America.

Cynthia Ericson, 3L, *Tulane Environmental Institute & District Judge David Hittner of the Southern District of Texas, Houston, TX.* I watched a lawyer lose his client's multi-million dollar civil case by being unprepared, disrespectful to the jury, and rude to the opposing party. His closing arguments ended with a bang when he threw an exploding golf ball down directly in front of the jury box - case closed.

Matt Gigliotti, 2L, *LAWMO in the Neighborhood Action Attorney's Office, Kansas City, MO.* I worked on neighborhood preservation actions as well as nuisance cases. Specifically I filed civil suits with

the goal to alleviate environmental harms caused by dilapidated houses and/or buildings that were in violation of city ordinances. Problems included lead paint, open containers of pesticides, and contamination of property by automotive fluids (oil, gas, antifreeze), overgrown and rank property, and property contaminated by cracked sewerage systems. I really enjoyed the summer because it showed me a different take of what I thought environmental law had to be.

Rebecca Judd, 3L, *Meyer and Glitzenstein and National Wildlife Federation, Washington, DC.* I spent 8 weeks working for Meyer & Glitzenstein, a Washington D.C. public interest law firm that specializes in environmental, endangered species act, and animal welfare cases. I drafted an extensive legal memorandum on the Marine Mammal Protection Act's jurisdiction over State inland waters for a suit against Florida dock contractors. I really felt like I was helping to save the Florida manatee! I also spent 6 weeks at National Wildlife Federation, a national nonprofit organization that advances the protection of wildlife and wildlife habitat. I spent my entire 6 weeks researching and drafting sections of a summary judgment brief for a suit against the U.S. Army Corps of Engineers for their unlawful issuance of nationwide permits (wetland dredging permits) in Florida panther critical habitat. We had a rock solid case it won, and I was thankful for the opportunity to do my part for the last remaining 80 Florida panthers in the wild.

Christine McBride, 3L, *Kirkpatrick and Lockhart, Pittsburgh, PA.* This summer I worked in a large law firm in Pittsburgh, PA on a document production for an insurance coverage litigation. Doesn't sound all that environmental, until I tell you that the coverage being litigated was that for a corporation who has struck a deal with the EPA and the state of Wisconsin over PCB sediment contamination. I worked closely with associates and paralegals, and was able to observe the workings of a large law firm on a case of this magnitude, which involves several other corporations and years of negotiations over PRPs, the best method to dredge, etc. I got a good idea of what the corporate side of an environmental litigation looks like, and just how many lawyers, politicians, CEOs, government agencies, biologists, environmental consultants, and engineers are involved.

Greg Nortman, 3L, *Stone & Hiles L.L.C, Los Angeles, CA.* I worked at Stone & Hiles L.L.C., a civil

Student Summers in Environmental Law

defense firm in Los Angeles, CA. It was very rewarding to defend our clients from frivolous law suits that many of the plaintiff's brought. I look forward to helping our clients in the Environmental Law Clinic.

Whiton Paine, 3L, *Southern Environmental Law Center, Atlanta, GA.* SELC's branch in Atlanta, GA works exclusively on environmental litigation and policy in six southeastern states; the Deep South office focuses on Alabama and Georgia. I first analyzed the statutory provisions a recent statewide water planning statute in Georgia as part of an overall litigation strategy in the "Tri-State Water Wars" a 15 year dispute involving water allocation in Georgia, Alabama, and Florida. I also researched NEPA's legislative EIS provision NEPA's "forgotten clause" as part of the Water Wars litigation. I also had a comparative analysis of wetlands laws in the Southeast and drafted a policy memorandum in anticipation of lobbying efforts before the Georgia General Assembly this fall.

Helen Pope, 3L, *Smith, Currie and Hancock, Atlanta, GA & Gieger Laborde and Laperouse, New Orleans, LA.* For the first half of the summer, I clerked with a leading national firm in the construction litigation niche. We represented contractors, subcontractors, architects and owners in disputes arising from delays caused by site conditions (i.e. wetlands, quicksand, etc.), labor issues, and inefficient work sequencing. The best part was that I got a lot of client contact, meaning that I spent a lot of time convincing engineers, project managers, and other non-lawyers that their depositions or examinations would go fine.

For the second half of the summer, I clerked with a firm in diverse litigation practice, including toxic tort. It was fun being at a firm that actually goes to trial regularly, and the highlight had to be working with Emily Greenfield, former environmental law student [and President of TELS], '03.

Michelle Purchner, 2L, *Bradley Arant & US Environmental Protection Agency, Washington, D.C.* This summer I was fortunate enough to work for both an environmental litigation practice group at a defense firm and the US Environmental Protection Agency in D.C. At the firm, besides writing legal memoranda, I went to a hearing for an upcoming Asbestos trial with over 144 defendants. I also attended meetings and participated in conference calls with the Alabama Department of Environmental Management about proposed rules for the concrete batch plant industry. At EPA I also gained experience with the Environmental Management System. My first assignment was to help grade agencies on their progress and put together a letter for the President of the United States as to how they are doing. I also researched and put together a document on unexploded ordinances on closed munitions ranges and DOD's responsibility to clean them up. I also did research on ozone depleting substances.

Jaclyn Strassberg, 3L, *Environmental Protection Agency, New York, NY.* The EPA was a very laid back office, which allowed me to focus on the projects of my choice. There were plenty of meetings and negotiations to attend, as well as opportunities to network. I

spent most of my time on a case that involved illegal fill of wetlands in an area that used to support unsafe, cheaply-built housing where low income tenants were living.

Meaghan Sullivan, 3L, *Department of Justice, Environmental Enforcement—ENRD, Washington, DC.* I was enormously impressed by the attorneys that I had the opportunity to work with and I found myself being involved in precisely the kinds of substantive legal issues that I wanted to work on. I particularly liked that I wasn't just relegated to writing academic research memorandums. The DOJ hires you with the absolute intention of using your work product. As a result, I found myself drafting summary judgment motions, motions to exclude expert testimony, and a host of other pleadings that actually were filed. I have learned a tremendous amount about what it means to work as a government attorney.

Alex Williamson, 2L, *Research Assistant: Tulane Environmental Law Clinic.* Learned how to spell pentachlorophenol and hexachlorobutadiene. I spent the summer working mostly on a case involving the Army Corps' plans to dredge the Industrial Canal east of New Orleans. We're trying to force them to test the sediments they plan to dredge for hazardous substances, and issue a supplemental EIS once they've completed the testing. The clinic has been involved in the case for nearly a decade, my link in this chain included many hours staring at data sheets wondering how somebody could possibly name a chemical "indeno(1,2,3-CD)pyrene".

Alumni Notes

The Tulane Environmental Law Program graduates 40 to 50 students a year with Certificates of Specialization in Environmental Law, and more than twice that number with at least one environmental law course in their upper class years. They go on to diverse fields of practice, from the following notes recently received:

Kay Bauer, 1984, Harris County Attorney's Office, Texas. I handle all the environmental enforcement cases for Harris County, including cases brought under the Texas Solid Waste Disposal Act, the Texas Clean Air Act, and the Texas Water Code. I also serve as an adjunct professor at South Texas College of Law where I teach environmental enforcement."

Loretta Cicutat Fitzgerald, 1985, Louisiana Supreme Court I've been working for the Louisiana Supreme Court for the past three years putting together charges for state crimes including wild life and pollution laws. I have also volunteered with Save Our Wetlands in opposing a proposed motor speedway adjoining Bayou Sauvage. Prior to that, I worked as a maritime plaintiffs' attorney in both Alaska and Louisiana."

Ramon Lloveras, 1986, Popular Insurance, Puerto Rico. After several years in private practice I entered the world of finance and now am President of three companies doing business throughout the Caribbean. But my real calling has been to lead the National Estuary Program initiative for the cleanup of the Bay of San Juan. Over the past five years we have restored a vital water link to the Bay, and relocated more than 1,200 people from slums bordering the Bay to inland dwellings which they now own, and manage with pride. This next month I am taking sixty business leaders on a tour of the Bay, and I will tell them that we need \$1 billion to restore it to environmental and economic health. But that I will not ask them for all of that amount, just some of it. And that it will be worth every penny.

Patricia E. Weeks, JD 1987; LLM 1994, Weeks & Gonzalez, New Orleans. After spending several years representing the oil and gas industry, Patricia E. Weeks now represents Louisiana land owners seeking restoration of properties damaged by the chemical contamination, abandoned production equipment, and direct land loss caused by oil and gas exploration and production activities. She practices in New Orleans with her husband, John P. Gonzalez (J.D. 1987).

Michael V. Brady, 1989, Diepenbrock Law Firm, Sacramento CA. I was in the first group of clinicians at the Environmental Law Clinic and the first Managing Editor for the Tulane Environmental Law Journal, both in 1989. I am a partner in the Diepenbrock Law Firm and have been for the past seven years. My practice is devoted exclusively to environmental law and litigation. I am currently active in using federal and state environmental statutes to limit the spread of uncontrolled Indian gaming in California. Over the past four years I have represented the automotive industry in its efforts to force the State of California to comply with those same environmental statutes when adopting rules and regulations for zero emission vehicles and greenhouse gas emissions.

Harry Stoller, LLM 1990, Illinois Energy Division, Commerce Commission. I got my LL.M. in May 1990 and went to work in September that year for the Illinois Commerce Commission General Counsel's Office, principally involved in accommodating the Illinois coal industry and Illinois coal burning utilities to the requirements of the CAA of 1990. Eventually, I moved into federal

energy and utility restructuring issues and became Director of the Commission Energy Division in 1997. Illinois restructured its electric utility industry in 1997, and the past several years have been ones of great turmoil and change. Interesting times in which to be involved in energy law!

Marian Macpherson, LLM 1991, National Marine Fisheries Service. There are lots of great things about working for NMFS. I was recently lucky enough to travel to the Juneau office the trip was short and packed with work, but since even the Federal building is surrounded by breathtaking views of glaciers, soaring eagles, and the harbor, a day at the offices was closer to a day in the post card. And in "Alaska, and every region for that matter, NMFS co-workers all seem to be fantastic fishermen, excellent cooks, and gracious hosts and hostesses. Which may explain why Uncle Sam gets us a cut rate.

Susan Hearne Richardson, 1991, Kilpatrick Stockton, Atlanta, GA. I am a partner in the Environmental Practice Group at Kilpatrick Stockton in Atlanta, Georgia. My practice focuses mainly on municipal wastewater issues. I am married to Craig Richardson, who is an assistant Vice President for AIG Environmental. We have one child, Molly, who is four.

Ricard J. Dunay, 1994, DEQ, Virginia. Since 2001 I have been employed as Senior Enforcement Specialist for the Virginia Department of Environmental Quality in DEQ's Valley Regional Office. I negotiate, draft, and enforce Consent Special Orders on behalf of the Commonwealth of Virginia and bring enforcement actions against air, waste, water, and UST/AST violators.

Ivelisse Iguina, L.L.M., 1994, Matta & Matta PSC, I am currently a Professor of Environmental Law at the Catholic University of Puerto Rico Law School where I have been since 1996.

Jim Metropulos, 1995, Sierra Club, California. I work as a legislative representative for Sierra Club California in Sacramento. I represent Sierra Club California's position at the capitol and state wide on issues related to endangered species, habitat and wildlife, parks and off road vehicles, and water supply and flood control. I spend a lot of time on Colorado River issues, including dealing with the drought and restoration of the Salton Sea. I also participate as an intervener in water rights cases on behalf of the state's "public trust" doctrine before the State's Water Resources Control Board. Before coming to Sierra Club California, I was a committee counsel to the Washington State Senate's Environment, Energy and Water Resources Committee in Olympia. Previously, I clerked for Justice Jim Regnier of the Montana Supreme Court in Helena.

Justin Bloom, 1996, Urban Green, New York. After a fantastic tenure with Riverkeeper of nearly three years. I am beginning a new adventure with my friend Janet MacGillivray, former EPA and Riverkeeper lawyer, in starting up a new organization, Urban Green. Our work will focus on urban environmental issues, with a "new ecology" approach that ties together environmental and community issues that affect New York City. I plan to build on the work I have been doing with Riverkeeper in NYC, including addressing development proposals, pollution control, public access, brownfields redevelopment initiatives and coalition building, while expanding my work beyond Riverkeeper's water centered model of advocacy.

Christine Guard, 1999, Florida Department of Environmental Protection. I work in the Public Lands Section of the Office of General Counsel as a senior litigating attorney. I litigate a wide variety of cases related to public land ownership, boundaries, and use, as well as an occasional 1st Amendment case, contract dispute, and ad valorem taxation issue

Alumni Notes continued

Lillian Mateo-Santos, LLM 1999, O'Neill & Borges. Shortly after my graduation from Tulane I joined a corporate law firm located in San Juan, Puerto Rico. As an associate in our Corporate and Tax Department, I concentrate in environmental law and litigation. I have gained significant experience in transactions and cases involving environmental audits, due diligence, permitting, land use, and environmental impact statement cases. I have also participated in the preparation, litigation and settlement of enforcement cases involving the assessment of very significant penalties with multiple government agencies.

Andres Tissera, LLM 1999, Cordoba, Spain. I am working as a legal adviser for the Fundacion Centro de Derechos Humanos y Ambiente. IN August of this year the Fundacion was recognized as a party plaintiff in its own right in a case involving nitrate pollution of the drinking water in three barrios of the City of Cordoba.

Michael T. Behan, 2000, United States Congress. Senior Legislative Aide, U.S. Representative Bernard Sanders (I Vt) Aide to seventh term, progressive Member of Congress on Health Care, Environmental, Energy, Education and Labor policy.

Scott Galante, 2000, Esq. Motley Rice LLC, Mt. Pleasant, SC I have been handling occupational exposure cases and have had some activity in various groundwater contamination cases. Mostly, I handle asbestos litigation and other occupational disease cases.

Nicolas Balmaceda, LLM 2000, Barros and Errazuriz, Santiago, Chile. After I left TLS I worked as a corporate attorney with LeBouef, Lamb, Greene and MacRae, L.L.P, New York branch. I focused on different kinds of transactions involving energy and Latin American parties. By the end of 2001 I was back in Santiago, Chile, working for a full practice large local firm called Barros & Errazuriz Abogados Limitada. I primarily practice financing and M&A. Recently I have been teaching environmental law as part of an introductory course to US law at the P. Universidad Catolica Law School.

Jason Reiger, LLM 2001, San Francisco, CA. Since graduation I have moved back to the San Francisco Bay Area and have been working at the California Public Utilities Commission. In proceedings before the Commission I represent the Office of Rate payer Advocates, an independent branch of the Commission, which champions the interests of the general public, especially residential and small commercial ratepayers. I have been lead counsel in a variety of proceedings, including: rate increase applications in which my team of expert witnesses and I have audited utility companies and fought against unsupportable requests for rate hikes, quasi legislative actions that establish statewide policy to move California's energy market into a customer choice oriented paradigm while ensuring that the mistakes of the recent energy crisis are not repeated and that the on going costs of that crisis are equally distributed, and disputes over proceeds when utilities sell facilities and properties.

Eugene Scott, LLM 2001, Torres & García, Puerto Rico. I worked for the P.R. EQB for two years, 2001-2003. In Sept. 2003 I began working with Torres & García, P.S.C., a law firm specializing in environmental, natural resources, and land use planning.

Alfred Brownell, LLM 2002, Green Advocates, Monrovia, Liberia. Presently we are in a big fight to save Liberia's two last remaining undisturbed forest blocks. We are winning! The forest agency for the first time in Liberia has agreed to permit environ-

mental NGOs to provide independent monitoring of the forest sector. We are still negotiating details. The agency has asked us to draft legislation providing for such independent monitoring. We have also pushed the government to issue an Executive Order mandating a civil society independent monitoring of all natural resources management in Liberia. We have demanded unrestricted access to all information concerning the management of Liberia's forest resources; when the government resisted, we threatened court action. The government caved into our demand and we are reviewing all of the relevant information. We are still negotiating for general public access. I am also working on a curriculum or an introductory course for environmental law and natural resources in Liberia.

Carmencita Conaway, LLM 2002, private practice, Puerto Rico. After I graduated from Tulane, I worked with the Puerto Rico Environmental Quality Board for a year and a half. During Christmas, I received an offer from a law firm in the San Juan area, and since February of this year, I have been working in the law firm's environmental department. We are lawyers for communities, and we defend the neighbors against projects that will negatively affect the environment. The Natural Resources class that I took at Tulane has been essential for my work, since I have to read a lot of Environmental Impact Statements.

Luis Martínez, 2002, EQB, Puerto Rico. I now work for the Puerto Rico Environmental Quality Board as a Special Aid to the President of the Board. The experience has been more than I hoped for. I also work as Special Counsel to the Board on Vieques Island matters and as Legislative Director. I was selected by the Board's President and legislature to form part of a group that will be writing Puerto Rico's first Environmental Law Code. We have many environmental laws, but they are not part of a cohesive unit and are often at conflict with one another. Most of our environmental legislation in Puerto Rico ends up being a translation of federal or state laws and now there is an opportunity to improve on that.

Felipe Leiva, LLM 2002, private practice, Santiago, Chile. Formerly with the natural environmental commission, I am now working in a small, "boutique" law firm on environmental issues related with industrial, sewage and mining companies. Until now I feel good here and I haven't moved to other (boring) legal topics, only environment.

Mary E. Gardner, 2003, Allan Kanner & Associates, New Orleans. I am currently assisting in the representation of the State of New Jersey in its claims against hundreds of industrial entities that have contaminated local groundwater sources. In addition, I am assisting in the representation of an Oklahoma Indian Tribe in its environmental claims for property damage caused by massive mining activities that occurred in the area during the first part of this century.

Bright Mando, LLM 2003, Lilongwe, Malawi. I left the Malawi Army and I have since joined the Environmental Affairs Department of Malawi. Just imagine, I am the only lawyer in the department. I am therefore very busy as the department advises the Forestry, Fisheries, National Parks and Wildlife, Energy, Mining, and Geology Departments, and the Ministry of Natural Resources and Environment Affairs (all of which have no lawyers).

Andre Shiromani, 2004, Earthjustice, Florida. I'm having a great time at Earthjustice with the new hire, **Alisa Coe**, also TLS 2004. With me, Alisa, and Monica (TLS 1990), it's beginning to feel like a satellite of the Tulane Environmental Law Clinic.

Current LLMs

Pamela Barber, United States

In the 1980's, I invented technology that helped industry move from chemical-based photographic processes into the digital era. I hold several patents in this field and served as CEO of a now-public company for over a decade. My early environmental interests in water quality led me back to graduate and law school. I am interested in international water law as it applies to irrigation and the resulting salinity and scarcity issues. It is my ambition to find a technical solution that will help overcome these challenges.

Meredith Bertel Cody, United States

I am a practicing attorney at the law firm of Montgomery Barnett in New Orleans. I do primarily toxic tort defense litigation, which generally against claims related to asbestos, silica, and toxic mold exposure. This past summer, I took the depositions of plaintiffs who have sued for asbestos-related illnesses, as well as their treating physicians and co-workers, and argued motions in Civil District Court.

Patricia de Lucena Cornette, Brazil

I am in my second year of the LLM program, and am also serving as a coordinator for the Louisiana State Conservation Health Sciences Center in New Orleans. I have recently published, in Brazil, research conducted in connection with my course in Comparative Environmental Law last spring: "Will the Green Leave the Brazilian Flag." It treats the regulation of GMO's in Brazil.

Ilia Fediavea, Soviet Union

In Russia I practiced in the Energy Department of the major international law firm – Lovells. My experience includes advising oil and gas corporations on various issues regarding

Russian subsoil, natural resources, petroleum and environmental law. I visited different parts of Russia including Sakhalin Island where foreign energy companies such as Exxon and Shell have been working for the past 10 years. My primary goal will be struggling for improvement of natural resources regulation in the Russian Federation.

Andrew Johnson, United States

I am a native of Atlanta (huge Braves fan). I graduated from Princeton University, got my JD from Loyola and worked in the Administrative Law Judge division of the Federal Energy Regulatory Commission during the summer of 2003. I decided to learn as much as I could about energy law before I ventured back out into the workplace.

Hiroshi Kobayashi, Japan

I was working for approximately 3 years at a Japanese law office that merged with a U.S.-based law firm in 2002, dealing mainly with corporate transactional matters. Previously, environmental issues were not considered crucial in business transactions. However, as a result of the enactment of the Japanese Soil Contamination Control Law in 2002, Japanese attorneys have had to cope with environmental issues business transactions.

Kimlin Lee, United States/Trinidad

I am presently a Deputy City Attorney for the City of New Orleans, in the general litigation section. Some of my cases have been environmental, and I recently led an effort to dismiss City from a large class action involving lead poisoning in public housing. I am originally from Trinidad, and I am particularly interested in the energy sector of its economy and recent proposals for natural gas development.

Mingqing You, China

I am a Fulbright Scholar from China, where I teach environmental law at the Zhongnan University of Economics and Law. My publications include a note on the 1999 Canadian Environmental Protection Act, and an article entitled "A Study on Trade-related Environmental Measures in WTO," A comparative law approach is an efficient way to develop environmental law, I plan to teach a course in US Environmental Law from comparative law perspective when I return to China.



3L **Cynthia Ericson** gets to know one of the locals on Alligator Bayou during a Clinic field trip.

Working for Salmon

*For a gulf coast law school - home of Redfish and Alligators (see above) - TLS has sent its share of graduates and students into the Pacific Northwest as advocates for the genus *Oncorhynchus*.*

Chris Keifer, 1998, is representing NOAA on salmon issues in the Pacific Northwest, including the Klamath River Coho salmon lawsuits. **William Foster**, 1992, represents the City of Seattle on its habitat conservation plan for Sockeye salmon, also in litigation. **Trilby Dorn**, 1997, is providing pro bono service to local activists seeking to restore salmon passage on Icicle Creek in Oregon. **Charles Winingham**, 2005, clerked with the Seattle city office this past summer on its salmon cases, while **Kate Miller**, also 2005, clerked for Trout Unlimited in Portland on recovery plans for salmon and steelhead.

Faculty Notes

Adam Babich

Courses: Environmental Advocacy (F), Clean Air Act (S); Comparative Environmental Law (Summer)

Recent publications/lectures:

The Apolitical Clinic, TULANE LAW., *Summ.* 2004, at 10, *The Violator Pays Rule*, ENVTL. F., May/June 2004, at 30, “Managing Environmental Cases”, Council of Canadian Administrative Tribunals 3rd International Conference, Toronto (6/04), “The Future of Environmental Law Clinics”, Regional Meeting of Environmental Law Societies, White Plains, NY (3/04), “The Role of the Tulane Environmental Law Clinic”, Air and Waste Management Association (Louisiana Section), New Orleans, LA (1/04), Moderator, William Gates, Sr. & Chuck Collins, America’s Wealth Gap and the Case for Preserving the Estate Tax, New Orleans, LA (12/03); Panelist, Anthropologists and Effective Environmental Justice Policy, American Anthropological Association, Chicago, IL (11/03), “Legal Initiatives of the Tulane Environmental Law Clinic”, Louisiana State Bar Association Environmental Section Seminar, New Orleans, LA (11/03), “Current Attacks on the Clean Air Act”, New Orleans Group of the Sierra Club Monthly Program, New Orleans, LA (11/03)

Current research interests:

“My continuing interest is in how goals of safety, fairness, efficiency, and legitimacy can best be balanced and advanced in the anti pollution regulatory system. This interest is reflected in my recent work on citizen suits and standard setting and will be at the heart of forthcoming articles.”

Eric Dannenmaier

Courses: International Development Law and Sustainability (F)

Recent publications:

“At the Frontlines of Democracy: Strengthening the Public Voice in State Decisions That Affect the Environment,” with M. Stanley Jones and S. Vaclavikova, *The Access Initiative US*, World Resources Institute (May 2004); “Trade, Democracy, and the FTAA: Public Access to the Process of Constructing a Free Trade Area of the Americas,” 27 *Fordham International Law Journal* 1066 (February 2004); “Assessing the CEC Public Advisory Committees,” North American Commission for Environmental Cooperation Ten Year Review Advisory Committee.

Current research interests: “I’ll continue working on questions of public access to environmental decision making, including a study of the so called “Atenco Machete Rebellion,” describing citizen opposition to the expropriation of communal lands for a new international airport for Mexico City. I am also working with an expert group established by the UN Economic Commission for Europe to formulate guidance on implementing Article 3:7 of the Aarhus Convention, which commits states parties to promote participation principles in international forums. As always, my work will count on the support of TLS students, who conduct research and fieldwork through Tulane’s Institute for Environmental Law and Policy.

Günther Handl

Advisor for *Journal of International and Comparative Law*

Courses: International Environmental Law (F); Public International Law (F); Law of the Sea (S)

Recent publications/lectures:

“Die gesellschaftliche Verantwortung von wirtschaftlichen Unternehmen als globale rechtliche Herausforderung,” *Humboldt Universität, Faculty of Law*, Berlin, February 16, 2004; “Corporate Environmental Responsibility under the Alien Tort Claims Act,” at Symposium on ‘Civil Litigation of International Law

Violations in U.S. Courts,’ University of Houston Law Center, March 1, 2004; “Alien Tort Claims Act Based Environmental Litigation after *Flores v. SPCC*,” at Symposium entitled “Linking the Environment and Human Rights: A Global Perspective,” William & Mary School of Law, Williamsburg, Va., March 27, 2004.

Oliver Houck

Advisor for *Environmental Law Journal*

Courses: Energy & Environment LLM Seminar; Natural Resources law (F); Coastal and Wetlands Law (S); Comparative Environmental Law (Summer).

Recent publications/lectures:

“More Unfinished Stories: Lucas, Atlanta Coalition and Palila/Sweet Home”, *Colorado Law Review*; “On the Limits of Charity: Lobbying, Litigation and Electoral Politics Under the Internal Revenue Code and Related Laws,” *Brooklyn Law Review*; “Tres Reflexiones Sobre El Derecho Ambiental en Estados Unidos: Hermanos en Armas, El Motor del Derecho Ambiental, La Desconstitucionalizacion del Derecho Ambiental,” *Andalucia Review of Public Administration*; “Tales From a Troubled Marriage: Science and Law in Environmental Policy, Science”; sourced version, *Tulane Environmental Law Journal*; “Thinking about Tomorrow: Cuba’s ‘Alternative Model’ for Sustainable Development,” *Tulane Environmental Law Journal*

Current research interests: “I’m co editing (with Richard Lazarus) environmental case histories by other colleagues in an upcoming book for Foundation Press. My current research is taking me back to Clean Water Act technology standards (working title: “Best Available Bullshit”), to the strangely distant relationship between public and private environmental law, (working title, “Brothers in Arms,” and like most brothers they barely talk to each other), and to an examination of the constitutionality of excluding members of Congress, for party affiliation or point of view, from participation in the development of legislation. Long term, very long, I am mulling the idea of a Comparative Environmental Law casebook, but I have also long resisted tying myself to the care and feeding of a single book when there is so much new to be explored.”

Jonathan Nash

Courses: Environmental Law: Pollution Control (F); Law and Economics (F); Common Law Property (S)

Recent Publications: “Resuscitating Deference to Lower Federal Judges’ Interpretations of State Law”, 77 *S. Cal. L. Rev.* 975 (2004).

Recent Lectures: “Induced Travel and the Case for Congestion Charges as a Response to Traffic Congestion”, Tulane Spring Environmental Conference, March 2004; “Judicial Campaign Speech Restrictions” at a Seminar on Judicial Independence and Accountability, March 2004; “Framing Effects and Regulatory Choice: The Case of Environmental Regulation”, American Law and Economics Association Annual Meeting, May 2004; “Certification, Certiorari and the Elusive Quest for Certainty”, May Gathering for Junior Law Faculty, May 2004; “Certification, Certiorari and the Elusive Quest for Certainty”, Southeastern Association of Law Schools Annual Meeting, August 2004; “Induced Travel and the Case for Congestion Charges as a Response to Traffic Congestion”, Canadian Law and Economics Association Annual Meeting, September 2004; “The Law and Economics of Tipping: The Laborer’s Perspective”, Canadian Law and Economics Association Annual Meeting, September 2004; “The Law and Economics of New Source Review”, Midwestern Law and Economics Association Annual Meeting, September 2004.

Current Research Interests: “My research continues to focus on the use of market mechanisms to achieve environmental regulation. In particular, I am interested in the use of fees to control traffic congestion and of tradable permits to preserve ecosystems and achieve pollution reduction.”

TULANE'S ENVIRONMENTAL LAW PROGRAM

The Tulane Environmental Law Program is one of the largest and most diverse in the United States. Each year Tulane graduates more than forty Juris Doctor and fifteen Masters candidates with specialties in environmental law. The experience of its faculty, the scholarship of its journal, the strength of its clinic, international projects of its institute, and the momentum of the Environmental Law Society—in the

extraordinary setting of New Orleans, the Lower Mississippi River, and the Gulf Coast—provide a unique experience for those with an interest in environmental law and international sustainable development policy. For more information, contact the Law School's admissions office at John Giffen Weinmann Hall, Tulane University, 6329 Freret Street. (504) 862-5930, or its web site at <http://www.law.tulane.edu>.



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