



SAVING THE CHESAPEAKE: TULANE LAW LENDS A MAJOR HAND

A federal court victory upholding the multistate, multi-agency Chesapeake Bay plan was a milestone in restoring the waterway. (American Farm Bureau Federation v EPA, 792 F. 3d 281 (3d Cir 2015))



Tulane Law Professor Oliver Houck (orange jacket) joined fellow environmentalists during a conclave to discuss the future of plans for restoring the Chesapeake Bay.

Following the appellate decision, over the vigorous opposition of the American Farm Bureau, National Pork Producers, U.S. Poultry & Egg Association and others, the Chesapeake Bay Foundation convened a gathering to answer a key question: the Bay is still in bad shape, state implementation is spotty, so where do we go from here?

Tulane Law Professor **Oliver Houck**, an authority on the Clean Water Act, delivered the keynote. And an array of Tulane environmental law alumni who've been deeply involved in Chesapeake Bay work spoke about next steps.

Houck said that addressing the root source of the problem, non-point pollution, requires financial incentives beyond those meager sums now devoted to paying farmers for cover crops and streamside vegetation.

The federal government spends "stupendous sums of money" on crop insurance and outright subsidies (billions of dollars for corn alone), he said, but none are conditioned on protecting the water.

"In effect, we are paying industrial agriculture to pollute," he said. The

money exists but needs to be leveraged, he said. Otherwise, environmentalists may be able to hold the line, but the nation's clean water goals will remain unattained.

Among the Tulanians working on Chesapeake Bay cleanup:

Michele Merkel (L '95) is co-director of Food & Water Justice, the legal arm of national nonprofit Food & Water Watch. She is particularly active in legislation and litigation "to force big poultry companies, like Perdue and Tyson, to take responsibility for their waste that is burdening contract growers and decimating the bay watershed."

Betsy Nicholas (L '98) is executive director of Waterkeepers Chesapeake, a coalition of 19 river, harbor and coast keeper organizations in the mid-Atlantic region. Her focus has been on Clean

Addressing the root source of the problem, non-point pollution, requires financial incentives beyond those meager sums now devoted to paying farmers for cover crops and streamside vegetation.

TULANE'S ENVIRONMENTAL AND ENERGY LAW PROGRAM

The Tulane Environmental and Energy Law program is one of the largest and most diverse in the world. The program's strengths include its faculty, the Environmental Law Clinic, the scholarship of the *Tulane Environmental Law Journal*, projects of the Institute on Water Resources Law & Policy, the enthusiasm of the Environmental & Energy Law Society and the engagement of its JD, LLM and SJD students. Located in the extraordinary setting of post-Katrina New Orleans, the Lower Mississippi River and the Gulf Coast, Tulane provides a unique academic experience in environmental, energy and sustainable development law and policy.

For more information, contact admissions@law.tulane.edu, 504-865-5930, or visit www.law.tulane.edu.



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The Tulane Environmental & Energy Law Society thanks all contributors to the 2016 newsletter.

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Jamie Futral (L '18)

Executive Summit Chair 2017:
Alex DeGiulio (L '18)

Faculty adviser:
Oliver Houck



Brett Korte, Environmental Law Institute



Betsy Nicholas, Chesapeake Waterkeepers

Water Act responsibilities. She has more than 16 years of environmental law and policy experience, including work for the U.S. Justice Department and for law firms in New York and Washington, D.C.

Brett Korte (L '14) is a special projects coordinator with the Environmental Law Institute in Washington, D.C. "My time at Tulane woke me up to coastal issues," he said, and his farm background "made the linkage" to hypoxia in the Gulf and later to the bay. At the CBF meeting, he presented a paper, first developed at Tulane, on the potential for a non-point-to-non-point nutrient trading program in agricultural watersheds.

Jill Witkowski Heaps, former deputy director of the Tulane Environmental Law Clinic, currently is director of the Choose Clean Water Coalition, which encompasses more than 200 groups from six states and the District of Columbia. She has been particularly focused on

building diversity into bay programs and serves on Environmental Protection Agency's National Environmental Justice Advisory Committee.



Michelle Merkel, Food & Water Justice



Jill Witkowski Heaps, Choose Clean Water Coalition

"In effect, we are paying industrial agriculture to pollute. The money exists but needs to be leveraged. Otherwise, environmentalists may be able to hold the line, but the nation's clean water goals will remain unattained."

— OLIVER HOUCK

Note: For more on the cleanup program's background, see Houck, "The Clean Water Act Returns (Again): TMDLs and The Chesapeake Bay Program" (ELI 2011) and "Cooperative Federalism, Nutrients, and the Clean Water Act: Three Cases Revisited" (ELI 2014).

THE DIVERSITY OF LIVES: ENERGY AND ENVIRONMENT ALUMNI SPREAD THEIR INFLUENCE ACROSS THE GLOBE

The depth and range of Tulane Law School's Energy and Environment alumni continue to expand. This sampling, taken from dozens of reports that faculty receive, demonstrates the impact TLS graduates make on the world.

Barrett Ristroph (L '04): Going Native ... and Far Afield



Barrett Ristroph and P.J. Simon

In less time than it takes to make partner in a corporate law firm, Barrett Ristroph has compiled a travelogue of law experiences increasingly focused on indigenous peoples: "I have managed to miss almost every Mardi Gras while working off the beaten path," she said.

Soon after graduation, she clerked for a territorial judge in the Northern Mariana Islands, where issues of territorial self-governance were rising. In the Philippines, she analyzed an evolving "environmental rule of law" and its relationship to human rights agreements. Most recently, she has worked in the high Arctic of Russia and now in Alaska, where she married Athabascan tribal leader P.J. Simon.

Ristroph said one of her proudest moments was being asked to "cut and serve a recently harvested whale," though she's a vegetarian who was "importing soy powder from 3000 miles away." Her life is a fusion of things: western science and community knowledge, community personality and western law, cooked food and fresh raw. That includes her new son, Magnus, whom she describes as "Abascajun," a confection of the far north and south Louisiana.

"A friend calls me an indoor environmentalist, and I have to admit that I do enjoy trying to save the world while

sitting safely behind the computer," she wrote. But, she said, "environmentalist" is a "difficult label in Alaska (not unlike Louisiana)." The task of "world-saving" requires a broader view and a dose of humility, she wrote. Stakeholders include "people who have spent hundreds of years living off the lands that others call wilderness." For some, protection of these lands is paramount, while (many) others "would be happy to unearth the oil beneath them."

Ristroph credited the Tulane environmental law program, particularly the Environmental Law Clinic, with exposing her to issues of environmental justice: "One does not have to travel to remote corners of the earth to find and fight injustice."

Andrew Wilson (L '83, LLM '93): Living on the Half Shell

It all started for Andrew Wilson with the Coastal and Wetland Seminar at Tulane Law, including an exercise called "Boot Camp in the Marsh" by its survivors and a research paper on oyster farming in the coastal zone. Little did he know that he would fall into the subject in practice — and the largest lawsuit of his life, pitting the Mississippi River freshwater diversions built by the U.S. Army Corps of Engineers and operated by the State of Louisiana against oyster fishermen holding oyster leases on state water bottoms.

Corps levees along the river had altered salinity regimes on which the oysters depended, and in the words of the Louisiana Supreme Court, "ruined some oyster grounds that had been extremely productive." Unfortunately,

the Corps diversions, intended to remedy this phenomenon, also created new sets of losers from slugs of fresh water, who then sued for damages under the state and federal takings clauses.

Wilson defended the state. What followed at the trial level and beyond was a saga too complicated to tell here, although he is in the process of producing a book on it titled "Oysters Rockefeller," not only due to the delicacy that carries its name but also because the damage award in the courts below was a bank-breaking \$2 billion.

In the end, the state high court in *Avenal v. Louisiana*, 88 So. 2d 1085 (2004), overturned the verdicts, interpreting lease clauses as waiving liability from state restoration projects and the takings doctrine as excusing state acts based on "background principles of law," which in this case was the existential "necessity" of coastal protection.

This would have ended the matter for Wilson, but not his involvement in the issue. He became an oyster advocate. Over the past two years, he helped with passage of two significant state oyster bills, (now Acts 570 and 595) working with the Louisiana Oyster Task Force and



Andrew Wilson

testifying before the Louisiana Senate to that end.

Wilson also is handling the first permit application for off-bottom oyster production on private lands (in sacks and cages, safe from predators and easier to harvest and ship). What this may do to traditional reef structures on which fisheries and coastal protection depends remains to be seen, but the project certainly seems worth exploring.

Here, then, is to Andy. We use a shucking knife, pry open the shell, add a dash of catsup, raise a glass and away we go.



Diana Csank (L '10): Joining the Fray

What we remember most about Diana Csank was independence: in the classroom, on research projects

and on canoe trips, where she would pose for the customary 15-person human pyramid shot standing next to it — on her head. She added something a little bit spectacular, and a driving energy.

After graduation, she worked with the Council on Environmental Quality's Office of Counsel, largely policy work, getting the feel of things. Now, she's with the Sierra Club in Washington, D.C., working on an ambitious litigation agenda linking energy and the environment.

She wrote: "I now split my time between demand side (retiring coal, pushing clean) and supply side (fighting fracked gas drilling and infrastructure) ... see, for example, our latest move on public land and pipelines."

In one case, "Kinder Morgan shelved a huge fracked gas pipeline in New England," and she reported "wins on the coal side, too," concluding, "I'm proud of the work we're doing in the climate movement, even if there is an inordinate number of wrongs still left to right."

Later, she wrote about efforts to protect critical habitat for endangered Atlantic Sturgeon in the Delaware River. "My best 24-hour period in

recent memory was a mad dash to the super bloom in Death Valley, with two environmental lawyers who knew the Eastern Sierras like the back of their hand," she wrote. "Last weekend, I took a short NEPA tour through Southern Maryland with stops at Calvert Cliffs, plus some paddling that brought back memories of Nat Res class and the Wolf River."

Murray Liebman (L '91):



Kim Kendall and Murray Liebman

Connecting on energy

Murray Liebman is president of Liebman & Associates, a Washington, D.C., clean energy and environmental technology consulting and advocacy firm that specializes in connecting sustainable energy projects with federal agency programs. Under the Energy Policy Act of 1992, the Department of Energy can invest up to 80 percent of project costs for research and development, and up to 50 percent for demonstration and commercial stages. DOE's National Laboratories offer highly coveted technical assistance as well. L&A has helped its clients secure nearly \$1 billion from the federal government, leveraging billions more in private-sector investment.

Liebman wrote that, coming out of law school, he sought something besides a law firm experience. "I wanted an entrepreneurial opportunity with direct exposure to decision-makers, which brought me to government service at the White House Office on Environmental Policy and DOE. I was constantly exposed to industry executives interested in exploring new policies, technologies, financial methodologies and programs."

As Dr. Robert Reich noted in *The Work of Nations*, 'strategic brokers' are needed to drive good ideas forward. Starting a company can be scary.

Especially at the beginning, I sometimes wondered whether L&A would be able to pay the rent. We started with one client, and before I knew it, we had a portfolio of great companies pursuing a variety of world-class projects."

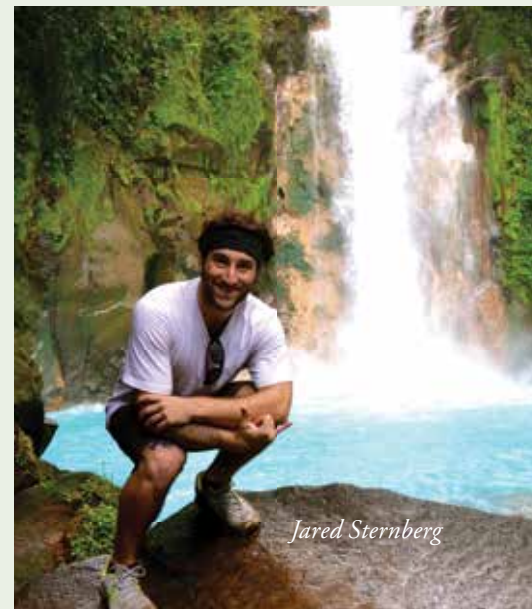
Tulane Law, where he was senior articles editor of the *Environmental Law Journal*, "prepared me for the world and not just the law library or a court room," he wrote. "Strategic planning is important, and so is maintaining a genuine openness to the concerns of others. Law firms are not a requirement for personal or professional success. Work really hard and be open to opportunities — big and small — because you never know where they will lead. I love where they have led every day."

Jared Sternberg (L '13): Promoting Ecotourism

Jared Sternberg attended Tulane to study environmental law and sustainable development, imagining himself landing with an NGO or human rights institution: "I wanted to be the guy suing on behalf of the environment, for the wildlife and indigenous populations," he said. "I wanted to be a voice for those without one."

But he found a different angle: ecotourism.

"I had seen the Amazon Rainforest and its people, I had seen poverty in sub-Saharan Africa, I had seen indigenous rights trampled in Nicaragua and elsewhere, and I had seen people struggling to overcome — smiling and strong," he wrote. "My travels made me who I am today, and they became my purpose."



Jared Sternberg

He said he felt compelled to share with the world. Sternberg launched Gondwana Ecotours, an international ecotourism company, during his final semester at Tulane Law. The company has drawn attention from *Forbes*, *The New York Times*, *the Chicago Tribune* and *the Los Angeles Times*, among others."

My hope is that Gondwana will benefit local economies and environments around the world," Sternberg wrote. "My time at Tulane gave me the tools for what Gondwana is today, and will become. Gracias for all the lessons ... and support."

Francisco Bustamante (LLM '09): Expanding nature's rights

Francisco Bustamante took his degree back to Ecuador and immediately put it to use. Joining the Ministry of Environment (2009-12), he was tasked with developing government policies to implement the then-recent Pachamama provisions of the amended constitution, which boldly extended protections to nature itself.

His work went on two parallel tracks, the rights of nature and concomitant



Francisco Bustamante

policies of reparations for environmental damages. That is a Superfund-like concept applied to a wider range of environmental harms, based, he wrote, "on the principles of integral reparation contained in inter-American instruments of human rights."

For the past three years, Bustamante has served as legal adviser for the Constitutional Court of Ecuador. He also teaches in Quito, and his curriculum includes courses in human rights, the environment and constitutional law."

The constitutional environmental law course has been a great experience so far, and a personal achievement for me because it is a course never considered in my county before," he wrote.

Mary Kathryn Nagle (L '08): Taking the stage



Mary Kathryn Nagle

Mary Nagle has presented theatre audiences across the United States with a series of remarkable plays turning on Native American and environmental rights."

As lawyers, we know the power of a good story," she wrote. "I believe the more we tell these particular stories, the more likely we are to succeed in shaping law so that it truly protects our lands, our lives and our communities."

Nagle wrote her first play while an undergraduate at Georgetown University, in her childhood town under the fumes of a world-leading lead smelting operation that later led to Superfund attention and to maladies she still suffers from.

After graduating with distinction from Tulane Law, she clerked for a federal judge then practiced at a high-powered trial law firm in Manhattan, bringing damage actions against financial institutions for the mortgage meltdown that crippled the country. She described the cases as "heady" and the work pace "exhilarating" and "brutal."

Nagle, an enrolled citizen of Cherokee Nation, then returned to her roots with a law practice in Washington, D.C., focused on Native American law — and to playwriting, which she had never abandoned. Her plays closely reflect what she has experienced, felt and learned, and they've been produced on college campuses, off-Broadway and at the Smithsonian Institution, the federal courthouse in Omaha, Nebraska, and the former Le Chat Noir in New Orleans.

SAMPLE PLAY LIST

Miss Lead: In the aftermath of World War II, lead smelter fallout has touched down in town, bringing dismay, denial and a gamut of other emotions.

Katrina Stories: Students are thrown into the diaspora by the hurricane that devastates New Orleans in 2005, while politicians offer bombast and confusion as families try to come to grips.

Waaxe's Law: In 1879, the U.S. District Court in Nebraska declared Indians to be "persons" under the law. The play chronicles Chief Standing Bear's 600-mile journey for justice and his unprecedented victory in federal court.

Manahatta: Jane Snake, a Native American woman with a Stanford MBA, reconnects with her ancestral homeland, Manahatta, where she joins a major investment bank just before the financial crisis of 2008.

Diamonds ... are a boy's best friend: Nathan, a Supreme Court clerk, battles for the constitutionality of the Violence Against Men Act as he also tries to process his identity as a survivor.

Sliver of a full moon: A movement led by tribal leaders and women survivors culminates in amending the Violence Against Women Act to restore criminal jurisdiction over non-Indians who commit acts of domestic violence against tribal citizens on tribal lands.

Fairly traceable: A young Ponca man faces climate change catastrophe and the inscrutable principles of legal standing.

FACULTY

Professor Adam Babich Presentations:

Oil and Gas keynote panel, Air and Waste Management Association Gulf Coast Oil & Gas Environmental Conference, New Orleans, June 21, 2016.

“Intellectual Diversity in Clinical Legal Education,” Southern Clinical Conference, Memphis, Tennessee, Oct. 23, 2015.

Oil and Gas Environmental Legislation and Litigation panel, Air and Waste Management Association Gulf Coast Oil & Gas Environmental Conference, New Orleans, Sept. 23, 2015.

“Working with Administrative Records,” Environmental Law Institute Professional Practice Seminar (webinar), Sept. 16, 2015.

“Regulation of Greenhouse Gases,” Tulane Law School’s 26th Annual CLE by the Hour, New Orleans, Dec. 28, 2015.

Professor Günther Handl Publications:

“Nuclear Off-Site Emergency Preparedness and Response: Some International Legal Aspects” in *Legal Aspects of the Use of Nuclear Energy for Peaceful Purposes*, (Fleck & Ohndendahl eds.) (2016).

Publication of “The Integration of Environmental Principles into the Policy and Practice of Multilateral Development Banks” is expected in 2017 in *Encyclopedia of Environmental Law*.

Presentations:

“Nuclear Emergency Preparedness and Response: Implications for Southeast Asia”, National University of Singapore, July 18, 2016.

“Nuclear Damage Limitation: Off-Site Emergency Preparedness and Response — Some International Legal Aspects,” Cologne, Germany, Nov. 20, 2015.

“Unilateral Regulation of Arctic Shipping: UNCLOS Art. 234 Powers and the Polar Code,” Oslo-Southampton-Tulane Colloquium, Oslo, Norway, Sept. 24, 2015.

Professor Oliver Houck Publications:

“The Reckoning: Oil and Gas Development in the Louisiana Coastal Zone,” 28 *Tulane Environmental Law Journal* 184 (2015) and selected for West’s *Land Use and Environmental Law Review* (2016).

“Willow Springs: Louisiana’s Civil Action,” 20 *Loyola Law Review* (New Orleans) 101 (2016).

Book review/essays:

“Astoria,” *The Environmental Forum*, September/October 2016.

“A Beekeeper’s Lament,” *The Environmental Forum*, May/June 2016.

“Tom’s River,” *The Environmental Forum*, January/February 2016.

“In the Kingdom of Ice,” *The Environmental Forum*, September/October 2015.

Presentations:

“Saving the Fly,” Audubon Institute, May 2016.

“Beyond TMDLs,” Symposium, Chesapeake Bay Foundation, April 2016.

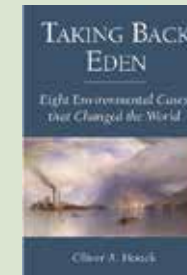
“After the Storm,” Katrina Retrospective, Tulane Law School, August 2015.

“Hidden Opportunities,” Coalition to Restore Coastal Louisiana, March 2015 (accompanying Coastal Stewardship Lifetime Achievement Award).



The Tulane environmental law faculty/staff are Katherine Van Marter (L/MSc '16), Professor Günther Handl, Dean Boyer (L '15), Christopher Dalbom (L '12), Clinical Instructor Elizabeth Calderon (L '98), Environmental Law Clinic Director Adam Babich, Professor Oliver Houck, Clinical Instructor Corinne Van Dalen, Tulane Institute on Water Resources Law & Policy Director Mark Davis, Clinical Instructor Mabelle Lee Hall (L '08) and Environmental Law Clinic Deputy Director Lisa Jordan (LLM '91). Not pictured: Professor Colin Crawford.

Taking Back Eden goes to China



Professor Oliver Houck’s *Taking Back Eden* (Island Press, 2010) tells the stories of eight cases around the globe that jump-started judicial attention to environmental protection in their host countries. Beginning with Storm King Mountain in the United States, the book moves to Japan, Canada, India, Russia, the Philippines, Greece and finally Chile, presenting a mosaic of citizen action and the judicial role. These days, it is China’s turn, and to facilitate an understanding of these developments, Tulane LLM graduate **Mingqing You (LLM '05)**, now with Wuhan University and a regular reporter of recent developments in his country, has arranged a Chinese translation of *Taking Back Eden* for academics, government officials and the general public. China now is experimenting with several forms of citizen action in environmental protection, including judicial review. It is our hope that this book and its examples will assist in the development and wise use of this approach.



Far East Scholars in Residence



Tulane Law School welcomes visiting research professors from China and Japan: **Hiroshi Kobayashi (LLM '05)** is a professor of law at Shinzu University’s School of Economics and Law and specializes in energy issues relating to disasters and to renewables. He will study the U.S. experience with renewables in several venues, and at Tulane will link up with Louisiana regulators, agencies, private companies and NGOs.



Assistant Professor **Hongxin Guo** of Zhongnan University of Economics and Law is visiting for the full 2016-17 academic year. Her research is stimulated by recent mass protests against the human and environmental impacts of government projects, several of which have reached U.S. reporting services. She intends to apply “risk regulation theory” to analyze the reasons behind these protests, the risks they pose and how to reduce them via a greater recognition of citizen rights.

International students in Tulane’s LLM Environmental and Comparative Law Seminar for 2016-17



Eric Dannenmaier

Dannenmaier to deanship: Former Tulane institute director moves up in academia

Eric Dannenmaier, who directed Tulane’s Institute for Environmental Law and Policy from 2001-06, was named dean of the Northern Illinois University College of Law in May 2016.

While at Tulane, Dannenmaier focused on what he called “environmental democracy,” the empowerment of local populations to impact development decisions that in large part determine the quality of their lives. He was particularly active in Tulane’s work in Cuba, heading law development projects and opening a first-time opportunity for U.S. scholars to interact with state and local officials on topics of mutual interest, including historic preservation, land use planning and agriculture.

He also was notable for an infectious can-do attitude that made many friends and few opponents. These qualities bode well for his success at Northern Illinois.

International students in Tulane’s LLM Environmental and Comparative Law Seminar for 2016-17 are: Front row: Po-Cheng Lin (China), Sonia Ahmad (Pakistan), Andres V. Mejia (Panama), Paulina Andrade (Ecuador), Mariela Martinez (Costa Rica), Daniel Norona (Ecuador) and Eduardo Mendoza (Ecuador). Back row: Mauritius Nagelmueller (Germany) with Professor Oliver Houck.



TULANE INSTITUTE ON WATER RESOURCES LAW & POLICY: *Code Blue: Taking the lead on developing Louisiana water law — and science.*

Climate change adaption, coastal restoration and everyday life have something in common: they all involve using and managing water. In Louisiana, planning for water has not focused much on the need for comprehensive laws and policies. After all, we've always assumed we had more than enough.

That is changing, thanks to a growing awareness that even here water is a limited and valuable resource. In 2014, the Louisiana Senate asked the Louisiana State Law Institute to form a Water Code Committee to draft a set of water laws that allow the state to manage water more comprehensively. The Louisiana State Law Institute, in turn, asked Tulane Institute on Water Resources Law & Policy Director Mark Davis to lead that committee.

The easy thing would have been to assemble some smart lawyers, find some good models from other states and start writing. The first two things did happen, but nobody has started drafting yet. Why? Because comprehensive water law demands — or ought to — more than an understanding of general legal principles. It requires an appreciation of science, culture and the fact that water is more than just a natural resource: it is essential to life.

Accordingly, the first questions facing the institute team are: How much water does Louisiana have? Where is it? How does it work? What is it needed for?

How much water does Louisiana have?
Where is it?
How does it work?
What is it needed for?

The answers to those questions were not clear, and they still aren't yet. Some of them had not really been asked before. It became the job of Institute program manager Christopher Dalbom to find the answers. Fortunately, he and the Institute knew where to turn. Within a few months, a team of hydrologic modelers with experience in Louisiana's surface, ground water and coastal waters had been assembled.

Coming from Tulane, The Water Institute of the Gulf, The Nature Conservancy and Louisiana State University, team members bring special tools and expertise to the task of, effectively, creating a water inventory and budget for Louisiana by gathering pieces the way one might when assembling a puzzle. The early results are exciting and encouraging. The pieces and people are coming together, and the hope is to begin an actual merger of those efforts.

Pulling the pieces together will take several years to do well, and Tulane's Institute will take on the lion's share of the work to support the Water Code Committee, which itself has precious few resources. In addition to Davis and Dalbom, post-graduate research fellows Caitrin Reilly and Dean Boyer have been deeply involved in the project. The Institute's work is supported by the McKnight Foundation, The Baton Rouge Area Foundation, the Greater New Orleans Foundation, the Louisiana State University Sea Grant Program and the Kabacoff Family Foundation.

Hey Buddy, Can You Spare a Few Billion?

"We could have saved the Earth, but we were too damned cheap," Kurt Vonnegut said.

Was Kurt right? We hope not, especially where the communities and natural wonders of coastal Louisiana are concerned. Over the past 10 years, a huge



Tulane's Institute on Water Resources Law & Policy is staffed by Director Mark Davis; Christopher Dalbom (L '12), program manager; and Katherine Van Marter (L/MSc '16) and Dean Boyer (L '15), post-graduate research fellows.

amount of energy, talent and time has gone into making plans to "restore" the coast, build stronger levees and manage water more smartly. But all of those things cost money, money that folks like to think is somebody else's job to provide. Bringing all of that into focus is a job the Institute has taken on with its Financing the Future project. Two years ago, the Institute's first Financing the Future report concluded that the cost of all the things that need doing would be roughly double the \$50 billion price tag touted in Louisiana's official 2012 Coastal Protection and Restoration Master Plan. In 2015, in its second report, the Institute concluded that only about \$21 billion in funding had been lined up. These twin conclusions, while not what people wanted to hear, have been widely accepted, including by all of the major candidates in Louisiana's 2015 governor's race.

The Institute, with post-graduate research fellow Dean Boyer at the helm, is looking at the options for financing the gap. Fundamental to this work is the understanding that the value of protecting, restoring and conserving this region, to the extent it can be done, is vastly greater than the currently projected costs. Also fundamental is the truth that new

revenues are going to be needed and that the financing burden is going to touch all levels of government — federal, state and local — and demand innovative thinking even in the private sector. This report is expected to be released late in 2016.

Over the past 10 years, a huge amount of energy, talent and time has gone into making plans to "restore" the coast, build stronger levees and manage water more smartly.

SUMMIT TACKLES NATIONAL POLICY AND ISSUES CLOSE TO HOME

By *Samantha Pfothenbauer (L '17)*
Executive chair, 2016 Summit

Interior Department Solicitor **Hilary Tompkins** addressed energy production, while climate specialist **Vicki Arroyo** delved into disaster resilience as Tulane's Summit on Environmental Law & Policy once again tackled some of the most pressing challenges in the energy and environment fields.

The 21st annual event, held in February 2016, attracted more than



Interior Department Solicitor Hilary Tompkins visited with students after her keynote address at the 2016 Tulane Summit on Environmental Law & Policy.

300 students, lawyers, academics and representatives from government, industry and nonprofit groups for two days of panels covering topics ranging from the Obama administration's Clean Power Plan to urban farming and environmental journalism. Tulane Law alum **Bessie Antin Daschbach (L '01)**, a member at Jones, Swanson, Huddell & Garrison, also described her work on coastal land loss litigation against 97 oil and gas companies.

Tompkins, the Interior Department's top lawyer since 2009, used her keynote to discuss her role in handling issues such as offshore oil and gas leasing and natural gas production. A member of the Navaho Nation, she also offered personal insights into being pulled away from her family as a child but later serving her tribe as an adult. She explained that she relies on the Navajo concept of balance, *Hózhó*, to navigate the most difficult social and environmental questions. It was a touching reminder about the value

of looking inward for guidance through our greatest challenges.

Arroyo's keynote was an equally personal treatment of disaster resilience and mitigation, with New Orleans' infrastructure and rebuilding as its focus. And she addressed the most deeply difficult question raised by Hurricane Katrina and subsequent events: at what point, if any, does society decide to retreat from South Louisiana?

A New Orleans native, Arroyo currently is executive director of the Georgetown Climate Center. Her presentation drew tears, outbursts of laughter and even a couple of angry questions from the audience as her talk transitioned into group reminiscing on the irreplaceable culture of a city facing overwhelming challenges.

At the end, the audience gave both speakers a standing ovation.

The Summit, which is free and open to the public, is fully student organized, with Professors Oliver Houck and Mark Davis serving as advisers.



Vicki Arroyo, executive director of the Georgetown Climate Center, explored disaster resilience and mitigation with a focus on New Orleans during the February summit.



Summit presenters included Bessie Antin Daschbach (L '01), who discussed her work on coastal land loss litigation against 97 oil and gas companies.

STUDENT SUMMER SNAPSHOTS

Catherine Crawford (L '18) Louisiana Department of Environmental Quality

Baton Rouge, Louisiana

I was a regulatory and litigation law clerk in the legal division for the Louisiana Department of Environmental Quality. LDEQ focuses on environmental compliance and enforcement. I wrote many petitions, memos and settlement responses and was able to go to court with one of the in-house counsel to hear oral arguments. The highlight was being asked to write a guidance document for LDEQ describing the specific process the agency must go through to begin using drones to inspect and regulate facilities in the future.

Jacob Kronish (L '17) New York City Department of Environmental Protection

I worked for the New York City Department of Environmental Protection, the administrative body that regulates the city's air, water and noise pollution standards and controls the water supply for all the New York City boroughs. I conducted research on various issues pertaining to water utility law, energy law, administrative procedure and pollution law. I also represented the city at the Environmental Control Board of the Office of Administrative Trials and Hearings to enforce asbestos and noise violations and to attain residents' compliance with the city's backflow prevention program.

Brendan Hughes (L '17) Harris County Attorney's Office and Resource Environmental Solutions

Houston, Texas

The first half of the summer, I worked with the Harris County Attorney's Office in the environment and infrastructure group. I researched ways to challenge Records of Decisions made by the Environmental Protection Agency. This work supported my group's role as a participant in the public comment process evaluating cleanup remedies the EPA might propose for the San Jacinto River Waste Pits Superfund Site on the north end of

Galveston Bay. I also researched the legal authority to challenge shortcomings of SARA Title III Local Emergency Planning Committees, whose response plans for chemical releases have been found to be insufficient.

The second half of the summer, I worked for the in-house legal team of RES, an ecological offset company. I helped support various property transactions, researching state-specific property laws and state-specific conservation programs. I assisted in resolving due diligence concerns and focused on how previously established claims to natural resources on a property, such as timber, could impact establishing permanent conservation easements. I also tracked evolving federal rules on the use of drones for commercial application, including remote sensing, mapping and photography.

Amelia Carder (L '17) California Attorney General's Office

Los Angeles

As a legal intern for the California Attorney General's Natural Resources Law Section, I worked on research as well as drafting motions and discovery requests for cases involving the various state water boards, the Air Resources Board, the California Department of Fish and Wildlife and the California Department of Forestry and Fire Protection. I really enjoyed working in an office that handles cases with such varied fact patterns and high-profile environmental cases, like the Refugio oil spill in Santa Barbara and the Aliso Canyon gas leaks in Porter Ranch. My favorite part was attending hearings and going on site visits to locations including the Ballona Wetlands and the Port of Los Angeles.

Ashlyn Smith-Sawka (L '18) Earthjustice

Tallahassee, Florida

I worked as a law clerk for Earthjustice, where my main projects involved establishing causation between agricultural soil components and toxins that were bioaccumulating in wetland wildlife, and pinpointing the procedural requirements for federal and state agencies to issue

permits to a coal ash landfill. Finding positive precedent case law in the 11th Circuit and navigating the Administrative Procedure Act was no walk down a nature trail, but the attorneys at Earthjustice made sure their interns got a taste of the natural resources we sought to protect. They brought us on a boat tour of Wakulla Springs, to watch sea turtles being released at St. Marks Lighthouse and to wildlife exhibits at the Tallahassee Museum. This aspect of my summer experience was indispensable because it helped to establish a passion for our projects and empathy towards our clients' injuries.

The highlight of my clerkship with Earthjustice was attending the Everglades Coalition environmental law clinic in Naples, Florida. Environmental attorneys presented on topics such as federal natural resources law, state environmental law, information gathering and public records requests and strategies for preparing for litigation.

Amanda Callihan (L '17) Harris County Attorney's Office

Houston, Texas

I worked at the Harris County Attorney's Office with the environment and infrastructure group. My work included research on CERCLA (Superfund) sites and attendance at an Environmental Protection Agency public meeting on the San Jacinto River Waste Pits Superfund Site. I drafted answers and discovery requests for a hazardous waste site case. I also wrote memoranda on potential issues with tax foreclosure properties under federal and state environmental laws and on the potential recovery of civil penalties for violations of Texas' clean air laws in relation to the Volkswagen emissions cheating scandal. Many of the environmental issues affecting the Houston area come through the Harris County Attorney's Office; I thoroughly enjoyed working with a group whose actions impact such a large community.

Save the Date

23rd ANNUAL SUMMIT March 10-11, 2017



Tulane Law students organizing the 2017 Summit on Environmental Law & Policy are: Alex DeGiulio, Brian Broussard, Talia Nimmer, Amy Fudenberg, Marisa Andrews, Lizzie Garcia, Hannah Polakowski, Ryan Cordell and Catherine Crawford.

TULANE ENVIRONMENTAL LAW CLINIC: Working cases from the Atchafalaya to the Mississippi to the Gulf

By Professor Adam Babich
Tulane Environmental Law Clinic director

The Tulane Environmental Law Clinic's student-attorneys continue to represent clients seeking to protect the Atchafalaya Basin. Non-Louisianans may know the basin from the PBS documentary "Atchafalaya Houseboat," or from the photographs of C.C. Lockwood (including the U.S. Post Office's 2012 Louisiana "Forever" stamp). But the basin's also a valued national resource: it is the nation's largest river swamp, with 885,000 acres of forested wetlands and 517,000 acres of marshland, according to the U.S. Geological Survey. It is also central to Louisiana's Cajun culture, having enabled generations to make a living from crawfishing, fishing and hunting.

But the basin faces "death by a thousand cuts" as oil and gas exploration and production, logging, private hunting reserves, road-building and other encroachments disrupt natural hydrology, destroy cypress stands and block access to traditional fishing grounds.

Many projects in the basin require the U.S. Army Corps of Engineers' approval, as they involve destruction of wetlands and are thus subject to the Corps' permitting system under the Clean Water Act. The Corps, however, is an inconsistent protector of the basin at best. Its enforcement division does not even have boats to inspect for compliance. Although Corps personnel will ride on permittees' boats (and therefore see what the permittees choose to show them), Corps policy prohibits inspectors from riding on our clients' boats.

The Corps approves many projects in the basin under "general permits," which by law are supposed to have "only minimal cumulative adverse effect on the environment." Corps authorizations under these permits can be fast and loose and can occur without public notice or opportunity to comment. Clinic clients Atchafalaya Basinkeeper, the Louisiana

Crawfish Producers Association-West and Gulf Restoration Network challenged reissuance of one of these permits after it became apparent that 1) the Corps authorized projects under the permit after it expired and before reissuance; 2) in reissuing the permit, the Corps skipped the step of looking at cumulative impacts under the National Environmental Policy Act; and 3) the Corps failed to determine whether the permit would result in "only minimal" impacts.


On June 8, 2016, a U.S. District Court remanded the permit for reevaluation, which presumably will lead to reform of this particular permit. A victory, therefore, for our clients and our student attorneys! But it is not the victory we wanted it to be. A "voluntary" remand avoids a public airing of the Corps' deeply flawed standard operating procedure.

One lesson for our students: administrative law, which is what allows our clients to challenge Corps actions, is an inherently frustrating tool. However, it is administrative law that empowers ordinary citizens to call out the U.S. government — the world's most powerful sovereign — in a public courtroom.

TELC tries to impress upon students the power of the tools that their pending degrees provide, even as those students learn how difficult it can be to wield those tools effectively enough to save their clients' way of life or to protect an endangered national resource.



Tulane's Environmental Law Clinic faculty/staff are Clinical Instructor Elizabeth Calderon (L '98), Linda Swanner, Director Adam Babich, Clinical Instructors Corinne Van Dalen and Mabelle Lee Hall (L '08) and Deputy Director Lisa Jordan (LLM '91). Not pictured, May Nguyen.


The basin is central to Louisiana's Cajun culture, having enabled generations to make a living from crawfishing, fishing and hunting.

Recent accomplishments

On Aug. 31, 2016, the Environmental Protection Agency granted the lion's share of a petition that TELC submitted on behalf of clients objecting to a proposed methanol plant in St. James Parish, Louisiana. The state's Department of Environmental Quality had issued a Clean Air Act permit for construction of the plant without state-of-the-art technology to limit release of volatile organic chemicals, greenhouse gases and other chemicals. The state's theory was that plant emissions would be under the thresholds that trigger the requirement for state-of-the-art controls. EPA, however, found that the state's permit limits are not adequate to keep emissions below thresholds. This is because key permit requirements are not enforceable and the permit does not limit all emissions, such as those during times of malfunction.

Student-attorneys presented oral arguments in U.S. District Court on behalf of the Charter Fisherman's Association (CFA) in successfully defending a federal rule governing red snapper fishing by charter boats and private anglers. On Jan. 5, 2016, the court upheld Amendment 40 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico under the Magnuson-Stevens Act.

Student-attorneys also helped negotiate a settlement that resulted in an Oct. 7, 2015, federal consent decree under which United Bulk Terminals Davant agreed to update its pollution-control technology and undertake other measures to prevent spills of coal and petroleum coke into the Mississippi River. UBT also agreed to pay \$75,000 to the Woodlands Conservancy to fund coastal restoration projects.

Awards

The Walter L. Cohen Alumni Association presented the Tulane Environmental Law Clinic with a Certificate of Appreciation in March 2016 for helping to derail a proposed move of the Cohen school, which has a predominantly African-American student body, to the site of a former toxic waste dump.

TELC also received the Alliance for Affordable Energy's inaugural Gary Groesch "Defender of the People" Award in November 2015 for helping champion affordable, sustainable energy in Louisiana.

The Tulane Environmental & Energy Law Society 2016-17



The Tulane Environmental & Energy Law Society 2016-17 leadership team is: Jamie Futral, president, Amy Fudenberg, treasurer, and Talia Nimmer, vice president (all L '18).



Professor Günther Handl (front, dark blue shirt), director, is joined by students attending Tulane Law's summer abroad program in Rhodes, Greece.

Maritime and Environment at Rhodes: Fusing the Fields

Tulane's celebrated summer law program in maritime law on the island of Rhodes, Greece, has been strengthened by the addition in 2016 of three environmental courses: the Law of the Sea, Underwater Cultural Heritage and Marine Resources Beyond National Jurisdiction.

These courses build on Marine Pollution and other law classes in New Orleans of mutual interest to admirals and greenies alike, and on collaboration in the annual Summit on Environmental Law & Policy.

In 2017, Rhodes will feature yet another addition treating environmental issues of the Mediterranean Sea and surrounding states.



TEELS students DIG DEEP

SPREAD GREENERY

Members of the Tulane Environmental & Energy Law Society planted hundreds of trees in fall 2015 to shore up Louisiana wetlands.



Anthony Cooper (L '18) secures a nutria guard around a newly planted red maple in Plaquemines Parish. **Opposite page:** Jennifer Bergeron and Andrew Houlin (both L '17) teams up for a Bayou Sauvage National Wildlife Refuge tree planting.

An October outing to the Caernarvon Diversion Outfall area in Plaquemines Parish added 500 native-species trees, including red maple, cypress and black gum to an upland conservation area adjacent to Big Mar Lake on the east bank of the Mississippi River. Students teamed with the Coalition to Restore Coastal Louisiana for the project, which was part of the group's Coastal Forest Restoration initiative.

The remote site was accessed by airboats, then the team hauled all of the trees, tools and supplies on wetland sleds. The new trees will help increase soil retention, promote land-building in the area, increase storm surge retention and boost forest resiliency.

In November, society members planted bottomland hardwoods at the Bayou Sauvage National Wildlife Refuge, one of the last remaining marshes adjacent to Lakes Pontchartrain and Borgne. An important stopover along the Mississippi Flyway, the refuge meets the needs of approximately 340 bird species and many alligators. Most of the refuge is located inside hurricane protection levees built to protect New Orleans from storm surge and flooding.

The planting was in partnership with Common Ground Relief Wetlands, which operates a state-licensed tree farm and plant nursery in New Orleans' Lower Ninth Ward. The project was a component of the U.S. Fish and Wildlife Service's Comprehensive Conservation Plan for the refuge. Restoring the hardwood ridge helps to ensure healthy habitat for migratory birds and improves land retention.



Talia Nimmer and Jake Buttery (both L '18) plant trees at the Caernarvon Diversion Outfall area in Plaquemines Parish.

The new trees will help increase soil retention, promote land-building in the area, increase storm surge retention and boost forest resiliency.