



Fifth Annual
**Sustainability
Conference of
American Legal
Educators**

Friday, May 10, 2019

Beus Center for Law and Society | Phoenix, AZ

ASU Sandra Day O'Connor
College of Law
Arizona State University
Law and Sustainability

The Program on Law and Sustainability at Arizona State University's Sandra Day O'Connor College of Law is delighted to welcome you to the Fourth Annual Sustainability Conference of American Legal Educators.

This ambitious conference is our signature contribution to the worldwide sustainability movement—a movement whose influence continues to expand throughout legal academia. As we're all aware, technological advancements over the past century have dramatically improved daily life for countless people across the world. Unfortunately, many of these modern conveniences also deplete or alter the planet's natural resources in ways that could significantly harm future generations. Transitioning cities, nations, and the world toward more environmentally sustainable living has thus emerged as one of humankind's greatest twenty-first century challenges.

Billions of dollars are invested annually into scientific and engineering research aimed at improving the environmental sustainability of modern economies. In contrast, far fewer resources are devoted to the development of creative policy strategies and legal structures tailored to support the valuable sustainability innovations emerging from this global research effort. This conference seeks to help address that imbalance by annually bringing together many of the nation's foremost legal scholars researching in sustainability-related areas. By providing a forum for legal academics to develop new collaborations and share ideas face-to-face, the conference aims to engender greater scholarly discourse on these imperative issues and to ultimately move the needle in humankind's relentless pursuit of a more ecologically sustainable society.

Keynote Speaker

Michael B. Gerrard

Andrew Sabin Professor of Professional Practice at Columbia Law School



Michael teaches courses on environmental law, climate change law, and energy regulation, and founded and directs the Sabin Center for Climate Change Law. He also chaired the faculty of Columbia University's Earth Institute from 2015 to 2018. From 1979 through 2008, he practiced environmental law in New York full time, most recently as partner in charge of the New York office of Arnold & Porter.

Michael has chaired the environmental law sections of the American Bar Association and the New York State Bar Association. He is author or editor of 13 books, most recently *Legal Pathways to Deep Decarbonization in the United States* (2019, co-ed. with John Dernbach) and *Climate Engineering and the Law: Regulation and Liability for Solar Radiation Management and Carbon Dioxide Removal* (2018, co-ed. with Tracy Hester)

Todd Aagaard

Villanova University Charles Widger School of Law

Karen Bradshaw

Arizona State University

Jane Maslow Cohen

University of Texas School of Law

Amy Cohen

The Ohio State University Moritz College of Law

John Dernbach

Widener University Commonwealth Law School

K.K. Duvivier

University of Denver Sturm College of Law

Joel Eisen

University of Richmond School of Law

Ann Eisenberg

University of South Carolina School of Law

Steven Ferrey

Suffolk University Law School

Sarah Fox

Northern Illinois University College of Law

Jill Fraley

Washington & Lee University School of Law

Andrea Freeman

University of Hawai'i William S. Richardson School of Law

Michael Gerrard

Columbia University Law School

Carmen G. Gonzalez

Seattle University School of Law

Jacqueline Hand

University of Detroit Mercy School of Law

Ernesto Hernandez-Lopez

Chapman University Dale E. Fowler School of Law

Keith Hirokawa

Albany Law School

Cameron Holley

University of New South Wales Law School

Shi-Ling Hsu

Florida State University College of Law

Bruce Huber

Notre Dame Law School

Blake Hudson

University of Houston Law Center

Alice Kaswan

University of San Francisco School of Law

Elizabeth Kronk Warner

University of Kansas School of Law

Rhett Larson

Arizona State University

Alexander Lemann

Marquette University Law School

Al Lin

University of California Davis School of Law

Anthony Moffa

University of Maine School of Law

Jonas Monast

University of North Carolina School of Law

Bronwen Morgan

University of New South Wales Law School

Felix Mormann

Texas A&M University School of Law

Jonathan R. Nash

Emory University School of Law

John Nolon

Pace University Elisabeth Haub School of Law

Jessica Owley

SUNY Buffalo Law School

Gabriel Pacyniak

University of New Mexico

Lee Paddock

The George Washington University Law School

Justin Pidot

University of Denver Sturm College of Law

Margherita Pieraccini

University of Bristol Law School

Margot J. Pollans

Pace University Elisabeth Haub School of Law

Lisa Pruitt

University of California Davis School of Law

Edward Richards

Louisiana State University Paul M. Hebert Law Center

Kalyani Robbins

Florida International University College of Law

Jonathan Rosenbloom

Drake University School of Law

Erin Ryan

Florida State University College of Law

Sarah Schindler

University of Maine School of Law

Jessica Shoemaker

University of Nebraska College of Law

Nancy Shurtz

University of Oregon School of Law

Stephanie M. Stern

Chicago Kent College of Law

Lisa Grow Sun

Brigham Young University J. Reuben Clark Law School

Barton H. Thompson, Jr.

Stanford Law School

Kristen van de Biezenbos

University of Calgary Faculty of Law

William Weeks

University of Houston Law Center

Michael Wolf

University of Florida Levin College of Law

Sandra Zellmer

University of Montana School of Law

8:00–8:30 a.m.

Check-in and Light Breakfast

W. P. Carey Foundation Armstrong Great Hall

8:30 a.m.

Introductions and Morrison Laureate Address

W. P. Carey Foundation Armstrong Great Hall

Jessica Owley, Federico Cheever (deceased), **Adena Rissman, Rebecca Shaw, Buzz Thompson & Bill Weeks**

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

9:30–10:50 a.m.

Break-out Session #1

Freestanding Presentations: Sustainability and Environmental Harms

Room 140

Lisa Sun, Brigham Young University J. Reuben Clark Law School, “Just Environmentalism”
Sandra Zellmer, University of Montana Alexander Blewett III School of Law, “Averting Mass Extinctions through Connectivity”
Kalyani Robbins, Florida International University College of Law, “The Private Public Trust”
Erin Ryan, Florida State University College of Law, “Breathing Air with Heft: An Experiential Report on Environmental Law and Public Health in China”

Panel: “Rural Resilience”

Room 150

Ann Eisenberg, University of South Carolina School of Law
Blake Hudson, University of Houston Law School
Lisa Pruitt, University of California-Davis School of Law
Jessica Shoemaker, University of Nebraska College of Law

Freestanding Presentations: Sustainability and Climate Change

Room 240

Michael Wolf, University of Florida Levin College of Law, “Guerilla Tactics for the War on Climate Change”
Nancy Shurtz, University of Oregon School of Law, “Self-Motivated Ecocentrism: The Modern Institutional Carbon Tax”
Gabriel Pacyniak, University of New Mexico School of Law, “The Green Coop Revolt: How Mountain West Rural Electricity Distribution Coops Are Confronting Their G&T to Accelerate the Shift to Clean Energy”

Panel: “Energy Justice and the Green Energy Transition”

Room 250

Elizabeth Kronk Warner, University of Kansas School of Law
Carmen Gonzalez, Seattle University School of Law
Alice Kaswan, University of San Francisco School of Law

11:00 a.m.–12:20 p.m. Break-out Session #2

Panel: “Sustainability and the Production of Food”

Room 150

Bronwen Morgan, University of New South Wales Law School
Amy Cohen, The Ohio State University Moritz College of Law
Margherita Pieraccini, University of Bristol Law School
Rhett Larson, Arizona State University Sandra Day O’Connor College of Law

Freestanding Presentations: Sustainability and Land Development

Room 240

Alexander Lemann, Marquette University Law School, “Assumption of Flood Risk”
John Nolon, Pace University Elisabeth Haub School of Law, “Low Carbon Land Use”
Keith Hirokawa, Albany Law School, “Climate Disruption and Ecosystem Tradeoffs”
Edward Richards, Louisiana State University Paul M. Hebert Law Center, “The Role of New Towns in the Sustainable Development of Coastal Communities Subject to Catastrophic Sea Level Rise and Storm Risk”

Panel: “Articles to Action: Making a Difference in Sustainability Law”

Room 250

KK DuVivier, University of Denver Sturm College of Law
John Dernbach, Widener University Commonwealth Law School
Steven Ferrey, Suffolk University Law School
Lee Paddock, George Washington University Law School

12:30–1:30 p.m.

Keynote Speaker: Michael Gerrard, Columbia University Law School, “Taking 1.5 Degrees Seriously: Tradeoffs and Triage”

W. P. Carey Foundation Armstrong Great Hall

1:40–3:00 p.m.

Break-out Session #3

Panel: “Homespun: Weaving Coherent Principles of Design for Equitably-Sustainable Communities”

Room 150

Karen Bradshaw, Arizona State University Sandra Day O’Connor College of Law
Jane M. Cohen, University of Texas School of Law
Margaret J. Pollans, Pace University Elisabeth Haub School of Law
Jonathan Rosenbloom, Drake University Law School

Panel: “Sustainable Food Systems”

Room 240

Andrea Freeman, University of Hawai’i William S. Richardson School of Law
Jacqueline Hand, University of Detroit Mercy School of Law
Ernesto Hernandez-Lopez, Chapman University Dale E. Fowler School of Law

Panel: “Conserving Federal Lands in the Current (Political) Climate”

Room 250

Anthony Moffa, University of Maine School of Law
Justin Pidot, University of Denver Sturm College of Law
Sarah Schindler, University of Maine School of Law

3:10–4:30 p.m.

Break-out Session #4

Freestanding Presentations: Sustainability and Legal Governance Structures

Room 150

Todd Aagard, Villanova University Charles Widger School of Law, “The Challenges of Compliance Markets”
Sarah Fox, Northern Illinois University College of Law, “Environmental Governance Gaps”
Albert C. Lin, University of California Davis School of Law, “Litigative Uncooperative Federalism”
Jill M. Fraley, Washington & Lee University School of Law, “Modern Property Theory’s Risks for Environmental Law”

Panel: “Energy Justice and Equity in a Dacarbonizing World”

Room 240

Felix Mormann, Texas A&M University School of Law
Kristen van de Biezenbos, University of Calgary Faculty of Law
Joel Eisen, University of Richmond School of Law
Jonas Monast, University of North Carolina School of Law

Panel: “Sustainability Law and Social Science”

Room 250

Bruce Huber, University of Notre Dame Law School
Shi-Ling Hsu, Florida State University College of Law
Jonathan Nash, Emory University School of Law
Stephanie Stern, Chicago-Kent College of Law, Illinois Institute of Technology

4:45–5:45 p.m.

Ethics CLE Opportunity

Room 250

“Navigating Ethical Issues in a Sustainability-Related Practice” (eligible for CLE “Ethics” Credit)
Denten Robinson (Partner – DR Law PLLC)

2019 Morrison Prize Contest Winner

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



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

95 DENVER L. REV. 727 (2018)

Abstract:

Climate change has significant consequences for land conservation. Government agencies and nonprofit land trusts heavily rely on perpetual conservation easements. However, climate change and other dynamic landscape changes raise questions about the effectiveness and adaptability of permanent conservation instruments like conservation easements. Building upon a study of 269 conservation easements and interviews with 70 conservation-easement professionals in six different states, this paper examines the adaptability of conservation easements to climate change. It outlines four potential approaches to enhance conservation outcomes under climate change: (1) shift land-acquisition priorities to account for potential climate change impacts; (2) consider conservation tools other than perpetual conservation easements; (3) ensure that the terms of conservation easements permit the holder to adapt to climate change successfully; and (4) provide for more active stewardship of conservation lands. There is still a good deal of uncertainty as to the legal fate of a conservation easement that no longer meets its original purposes. Many state laws provide that conservation easements can be modified or terminated in the same manner as traditional easements. Yet conservation easements are in many ways unlike other easements. The beneficiary is usually the public, not merely a neighboring landowner, and the holder is always a nonprofit conservation organization or a government agency. Thus, there is a case to be made for adaptive protection. An overly narrow focus on perpetual property rights could actually thwart efforts to meet adaptation needs over the long term. We call for careful attention to ensuring conservation outcomes in dynamic landscapes over time.

What is the Morrison Prize Contest?

The Morrison Prize is a \$10,000 cash prize awarded to the author(s) of the most impactful sustainability-related legal academic paper published in North America during the previous year. The Morrison Prize Contest bears the name of its funder, Richard N. Morrison, who is also the co-founder of Arizona State University’s Morrison Institute for Public Policy. Mr. Morrison is a successful Arizona attorney and philanthropist who has published multiple law journal articles on water law and environmental law topics and given dozens of presentations in those areas over his distinguished career. The Program on Law and Sustainability wishes to express its deepest appreciation to Mr. Morrison for his generous funding of the contest.

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