



**Third Annual**

# Sustainability Conference of American Legal Educators

**Friday, May 12, 2017**

**Beus Center for Law and Society | Phoenix, AZ**

# Welcome



The Program on Law & Sustainability at the Sandra Day O'Connor College of Law at Arizona State University is delighted to welcome you to the **Third 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 Professor Carol M. Rose

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### “Commons, Cognition, and Climate Change”

**Carol M. Rose** is the Gordon Bradford Tweedy Professor Emeritus of Law and Organization and Professorial Lecturer in Law at Yale Law School and the Lohse Chair in Water and Natural Resources at the University of Arizona James E. Rogers College of Law and is a member of the American Academy of Arts and Sciences. Professor Rose earned her J.D. degree from the University of Chicago in 1977 and has taught law at many of the nation's greatest law schools, including Harvard, Stanford, Yale, Chicago, and NYU. Through her insightful and rigorous academic writings, Professor Rose has established herself as one of the most influential property and environmental law scholars of the past half-century. Among other things, Professor Rose significantly helped to shape the scholarly discourse on such issues as the development of regulatory takings law, the allocation of state and local authority in land use planning, the optimal balance between bright-line and discretionary legal rules, and the growing complexity of modern environmental law.



# Speakers

**Peter Appel**

University of Georgia Law School

**Sumudu Atapatu**

University of Wisconsin School of Law

**Kristen Barnes**

University of Akron School of Law

**Bret Birdsong**

UNLV William S. Boyd School of Law

**Andrea Boyack**

Washburn University School of Law

**Lee Breckenridge**

Northeastern University School of Law

**Sarah Bronin**

University of Connecticut Law School

**Vanessa Casado Perez**

Texas A&M University School of Law

**David Dana**

Northwestern University Law School

**John C. Dernbach**

Widener University Commonwealth Law School

**K.K. DuVivier**

University of Denver Sturm College of Law

**Ann Eisenberg**

University of South Carolina School of Law

**Paolo D. Farah**

West Virginia University

**Steven Ferrey**

Suffolk University Law School

**Judith Fox**

Notre Dame Law School

**Andrea Freeman**

University of Hawaii - Richardson School of Law

**Michael B. Gerrard**

Columbia Law School

**Jonathan Gilligan**

Vanderbilt University

**Shelby D. Green**

Pace University Elisabeth Haub School of Law

**Lakshman Guruswamy**

University of Colorado School of Law

**Ernesto Hernandez-Lopez**

Chapman University - Fowler School of Law

**Shi-Ling Hsu**

Florida State University College of Law

**Alexandra B. Klass**

University of Minnesota Law School

**Rhett Larson**

Sandra Day O'Connor College of Law at Arizona State University

**Alex Lemann**

Georgetown University Law School

**Albert Lin**

UC-Davis School of Law

**Gregg P. Macey**

Brooklyn Law School

**Melissa Mortazavi**

University of Oklahoma College of Law

**Sharmila Murthy**

Suffolk University Law School

**Jonathan R. Nash**

Emory University School of Law

**John Nolon**

Pace University Elisabeth Haub School of Law

**Hari M. Osofsky**

University of Minnesota Law School

**Uma Outka**

University of Kansas School of Law

**David Reiss**

Brooklyn Law School

**Edward Richards**

LSU Law School

**Tracey M. Roberts**

Cumberland School of Law

**Carol Rose**

Yale Law School & University of Arizona College of Law

**Troy Rule**

Sandra Day O'Connor College of Law at Arizona State University

**Erin Ryan**

Florida State University College of Law

**Erin Scharff**

Sandra Day O'Connor College of Law at Arizona State University

**Sara Seck**

Western University (Canada)

**Steph Tai**

University of Wisconsin School of Law

**Buzz Thompson**

Stanford University Law School

**Steven Weissman**

Berkeley Law

**Shelly Welton**

University of South Carolina School of Law

**Michael Wolf**

University of Florida Levin College of Law

**Michael P. Vandenberg**

Vanderbilt University Law School

**Kristen Van De Biezenbos**

University of Oklahoma College of Law

# Schedule



**8:00–8:30 a.m.**

## **Check-in and Light Breakfast**

*W. P. Carey Foundation Armstrong Great Hall*

**8:30 a.m.**

## **Introductions and Welcome**

*W. P. Carey Foundation Armstrong Great Hall*

- Douglas J. Sylvester, Dean and Professor of Law, Sandra Day O'Connor College of Law at ASU
- Troy Rule, Faculty Director, Program on Law & Sustainability, Sandra Day O'Connor College of Law at ASU

**9:00–10:20 a.m.**

## **Break-out Session #1**

### **Panel: "Sustainability, the Energy Transition, and Land Use Planning"**

*Room 150*

- Hari M. Osofsky, University of Minnesota Law School
- Shelby D. Green, Pace University Elisabeth Haub School of Law
- Uma Outka, University of Kansas School of Law

### **Panel: "Food Law and Policy and Sustainability"**

*Room 250*

- Andrea Freeman, University of Hawaii - Richardson School of Law
- Steph Tai, University of Wisconsin School of Law
- Ernesto Hernandez-Lopez, Chapman University - Fowler School of Law

### **Panel: "Deep Decarbonization Pathways for the United States"**

*Room 240*

- John C. Dernbach, Widener University Commonwealth Law School
- K.K. DuVivier, University of Denver Sturm College of Law
- Michael B. Gerrard, Columbia Law School
- Steven Ferrey, Suffolk University Law School

**10:30–11:50 a.m.**

## **Break-out Session #2**

### **Panel: "Energy and Sustainability"**

*Room 240*

- Alexandra B. Klass, University of Minnesota Law School
- Troy Rule, Sandra Day O'Connor College of Law at ASU
- Steven Weissman, Berkeley Law
- Shelly Welton, University of South Carolina School of Law

### **Panel: "Economic Aspects of Sustainability"**

*Room 150*

- Jonathan R. Nash, Emory University School of Law

# Schedule

- Shi-Ling Hsu, Florida State University College of Law
- Tracey M. Roberts, Cumberland School of Law
- Peter Appel, University of Georgia Law School

## Freestanding Presentations: “Sustainability and Humanity”

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### *Room 250*

- Alex Lemann, Georgetown University Law School, “Stronger than the Storm: Disaster Law in a Defiant Age”
- Edward Richards, LSU Law School, “From Eternal to Ephemeral Property: Rethinking Legal Rights for Coastal Communities”
- Sharmila Murthy, Suffolk University Law School, “Technocratic Approaches to Sustainable Development: A New Way to Realize the Human Right to Water?”
- Erin Scharff, Sandra Day O'Connor College of Law at ASU, “Green Fees: State Law Limitations on Pricing Environmental Externalities”

**12:00–1:20 p.m.**

## **Lunch, Morrison Laureate Presentation, and Keynote Address**

*W. P. Carey Foundation Armstrong Great Hall*

Morrison Laureates Michael P. Vandenberg & Jonathan Gilligan, *Beyond Gridlock*

### **Keynote Speaker: Carol Rose**

### **“Commons, Cognition, and Climate Change”**

Gordon Bradford Tweedy Professor Emeritus of Law and Organization and Professorial Lecturer in Law, Yale Law School, and Lohse Chair in Water and Natural Resources at the University of Arizona James E. Rogers College of Law

**1:30–2:50 p.m.**

## **Break-out Session #3**

### **Panel: “Food, Energy and Sustainability: Competing Demands on Land Use and Natural Resources”**

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### *Room 150*

- Melissa Mortazavi, University of Oklahoma College of Law
- Gregg P. Macey, Brooklyn Law School
- Kristen Van De Biezenbos, University of Oklahoma College of Law
- Alexia Brunet Marks, University of Colorado School of Law

### **Panel: “Legal Reforms for Drought Resilience”**

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### *Room 240*

- Buzz Thompson, Stanford University Law School
- Vanessa Casado Perez, Texas A&M University School of Law
- Bret Birdsong, UNLV William S. Boyd School of Law
- Rhett Larson, Sandra Day O'Connor College of Law at ASU

# Schedule



## Freestanding Presentations: “Sustainability, Politics, and Society”

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*Room 250*

- Sarah Bronin, University of Connecticut Law School, “Climate Action Planning in Hartford: A Case Study”
- John Nolon, Pace University Elisabeth Haub School of Law, “Bottom-up Sustainability Strategies: What to do While Top-Down is on Hold”
- Michael Wolf, University of Florida Levin College of Law, “Putting the Shoe on the Other Foot: Conservative Jurisprudence and the Preservation of Sustainability Law”
- Paolo D. Farah, West Virginia University, “Competition Law in Energy vs. Sustainable Development: A Clash of Individualism and Cooperative Partnerships?”

**3:00–4:20 p.m.**

## Break-out Session #4

### Panel: “The Social Pillars of Sustainable Development and the Sustainable Development Goals”

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*Room 150*

- Sumudu Atapatu, University of Wisconsin School of Law
- Lakshman Guruswamy, University of Colorado School of Law
- Sara Seck, Western University (Canada)
- Ann Eisenberg, University of South Carolina School of Law

### Panel: “Sustainable Housing”

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*Room 250*

- Kristen Barnes, University of Akron School of Law
- Andrea Boyack, Washburn University School of Law
- Judith Fox, Notre Dame Law School
- David Reiss, Brooklyn Law School

## Freestanding Presentations: “Sustainability and Technology”

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*Room 240*

- Albert Lin, UC-Davis School of Law, “Carbon Dioxide Removal After Paris”
- Lee Breckenridge, Northeastern University School of Law, “Renewable Energy, Distributed Generation and Storage, and a ‘Sharing Economy’”
- Erin Ryan, Florida State University College of Law, “Negotiating Environmental Federalism”

**4:30–5:30 p.m.**

## Reception

*W. P. Carey Foundation Armstrong Great Hall*

# Morrison Prize

## 2017 Morrison Prize Contest Winner

### *Beyond Gridlock*



Michael P. Vandenberg & Jonathan A. Gilligan

40 COLUMBIA JOURNAL OF ENVIRONMENTAL LAW 217 (2015)

**Abstract:** Private climate governance can achieve major greenhouse gas (“GHG”) emissions reductions while governments are in gridlock...Microsoft, Google and many other companies have committed to become carbon neutral... Investors holding roughly \$90 trillion in assets have pressured large corporations to disclose and reduce their carbon footprints, and participating companies report having reduced emissions by an amount equal to a major emitting nation. Private forest certification programs have taken steps to reduce the GHG emissions from deforestation. Household carbon regulation is off the table in many countries, but private advocacy groups and corporations have reduced household emissions through home energy disclosure, eco-driving campaigns, employee programs, voluntary carbon offsets, and other initiatives.

To explain the importance of private climate governance, this Article is structured around three propositions. The first is the need for urgency... The second proposition is that the barriers to adopting and implementing a carbon price are unlikely to be overcome in the next decade... The third proposition is that unlocking the potential of private governance will require a conceptual shift by scholars, philanthropists, and corporate and NGO managers... Private initiatives cannot keep global emissions on track to achieve the most widely adopted climate target, but they can achieve a private governance wedge: they can reduce emissions by roughly 1,000 million tons (a gigaton) of CO<sub>2</sub> per year between 2016 and 2025. When combined with other efforts, this private governance wedge offers a reasonable chance of buying a decade to resolve the current government gridlock.

### ***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 is open to full-time law professors who have published environmental sustainability-related papers in printed U.S. or Canadian legal academic journals during the contest period. All eligible papers entered into the contest undergo independent review and scoring by a diverse group of full-time law professors who teach in environmental sustainability-related areas at four different North American law schools.*

*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 & Sustainability wishes to express its deepest appreciation to Mr. Morrison for his generous funding of the contest.*



**Law & Sustainability**

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