

Fourth Annual

Sustainability Conference of American Legal Educators



Friday, May 11, 2018

Beus Center for Law and Society | Phoenix, AZ

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

Welcome



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

Barton H. "Buzz" Thompson Jr., Stanford Law School



A leading expert in environmental and natural resources law and policy, Barton H. "Buzz" Thompson, Jr., JD/MBA '76 (BA '72), has contributed a large body of scholarship on environmental issues ranging from the future of endangered species and fisheries to the use of economic techniques for regulating the environment. He is the founding director of the law school's Environmental and Natural Resources Program, Perry L. McCarty Director and senior fellow of the Woods Institute for the Environment, and a senior fellow (by courtesy) at the Freeman Spogli Institute for International Studies. In 2008, the Supreme Court appointed Professor Thompson to serve as the special master in *Montana v. Wyoming* (137 Original). Professor Thompson is chairman of the board of the Resources Legacy Fund and the Resources Legacy Fund Foundation, a California trustee for The Nature Conservancy, and a board member of both the American Farmland Trust and the Sonoran Institute.

He previously served as a member of the Science Advisory Board for the U.S. Environmental Protection Agency. Before joining the Stanford Law School faculty in 1986, he was a partner at O'Melveny & Myers in Los Angeles and a lecturer at the UCLA School of Law. He was a law clerk to Chief Justice William H. Rehnquist '52 (BA '48, MA '48) of the U.S. Supreme Court and Judge Joseph T. Sneed of the U.S. Court of Appeals for the Ninth Circuit.

Speakers

Todd Aagaard

Villanova University Charles Widger School of Law

Sumudu Atapattu

University of Wisconsin Law School

Shalanda Baker

Northeastern University

Rebecca Bratspies

CUNY School of Law

Daniel Chow

Ohio State University Michael E. Moritz College of Law

Jane Cohen

University of Texas School of Law

James Coleman

University of Texas School of Law

K.K. Duvivier

University of Denver Sturm College of Law

Ann Eisenberg

University of South Carolina School of Law

Paolo Davide Farah

West Virginia University Rockefeller School & College of Law

Steven Ferrey

Suffolk University Law School

Andrea Freeman

University of Hawaii William S. Richardson School of Law

Robert Glicksman

George Washington University Law School

Carmen G. Gonzalez

Seattle University School of Law

Burke Griggs

Washburn University School of Law

Ernesto Hernandez-Lopez

Chapman University Fowler School of Law

Shi-Ling Hsu

Florida State University College of Law

Bruce Huber

Notre Dame Law School

Blake Hudson

University of Houston Law Center

Sharon Jacobs

University of Colorado Law School

Alice Kaswan

University of San Francisco School of Law

Alexandra Klass

University of Minnesota Law School

Christine Klein

University of Florida Levin College of Law

Elizabeth Kronk Warner

University of Kansas School of Law

Rhett Larson

Arizona State University

Al Lin

UC Davis School of Law

Gregg Macey

Brooklyn Law School

Anthony Moffa

University of Maine School of Law

Melissa Mortazavi

University of Oklahoma College of Law

Jonathan R. Nash

Emory University School of Law

Hari Osofsky

Penn State Law and School of International Affairs

Jessica Owley

SUNY Buffalo Law School

Lee Paddock

The George Washington University Law School

Jacqueline Peel

Melbourne Law School, University of Melbourne

Tracey M. Roberts

Cumberland School of Law, Samford University

Jonathan Rosenbloom

Drake University School of Law

Erin Ryan

Florida State University College of Law

Stephanie M. Stern

Chicago Kent College of Law

David Strifling

Marquette University Law School

Steph Tai

University of Wisconsin Law School

Barton H. Thompson, Jr.

Stanford Law School

Kristen van de Biezenbos

University of Calgary Faculty of Law

Gina Warren

University of Houston Law Center

Steven Weissman

Berkeley Law

Shelley Welton

University of South Carolina School of Law

Michael Wolf

University of Florida Levin College of Law

George Wyeth

George Washington University Law School

Kellen Zale

University of Houston Law Center

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 Morrison Laureate Address

W. P. Carey Foundation Armstrong Great Hall

Energy Partisanship, 65 EMORY LAW JOURNAL 695 (2016)

- **Hari Osofsky**, Dean, Penn State Law and School of International Affairs
- **Jacqueline Peel**, Melbourne Law School, University of Melbourne

9:30–10:50 a.m.

Break-out Session #1

Freestanding Presentations: “Sustainability and Property Rights”

Room 150

- Blake Hudson, University of Houston Law Center, “The Most Wicked Environmental Problem of Our Time: Land Development”
- Christine Klein, University of Florida Levin College of Law, “Deadly Takings”
- Alexandra Klass, University of Minnesota Law School, “Eminent Domain and Energy Infrastructure”
- Michael Wolf, University of Florida Levin College of Law, “The Privilege and Immunity of “Protection by the Government””

Panel: “Environmental Justice and the Social Pillar of Sustainable Development”

Room 250

- Sumudu Atapattu, University of Wisconsin Law School
- Rebecca Bratspies, CUNY School of Law
- Carmen G. Gonzalez, Seattle University School of Law
- Elizabeth Kronk Warner, University of Kansas School of Law

Panel: “Climate, Energy, and Justice”

Room 240

- Shalanda Baker, Northeastern University
- Alice Kaswan, University of San Francisco School of Law
- Shelley Welton, University of South Carolina School of Law

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

Panel: “Energy, Democracy, and Sustainability”

Room 240

Schedule

- James Coleman, Southern Methodist University
- Bruce Huber, Notre Dame Law School
- Sharon Jacobs, University of Colorado Law School
- Shelley Welton, University of South Carolina School of Law

Freestanding Presentations: “Sustainability and Water Law”

Room 150

- Burke Griggs, Washburn University School of Law, “Compacts without Rivers?”
- Rhett Larson, Arizona State University, “Inter-State Lessons for International Water Law”
- Erin Ryan, Florida State University College of Law, “The Public Trust Doctrine, Private Water Allocations, and Saving Mono Lake”
- David Striffling, Marquette University Law School, “Enabling and Incentivizing Effective Integrated Water Resources Management”

Panel: “Environmental Law and Social Science”

Room 250

- Shi-Ling Hsu, Florida State University College of Law
- Jonathan R. Nash, Emory University School of Law
- Tracey Roberts, Cumberland School of Law, Samford University
- Stephanie Stern, Chicago-Kent College of Law

12:30–1:30 p.m.

Keynote Speaker: Barton H. “Buzz” Thompson Jr., Stanford Law School

W. P. Carey Foundation Armstrong Great Hall

1:40–3:00 p.m.

Break-out Session #3

Freestanding Presentations: “Sustainability and Administrative Law”

Room 150

- Todd Aagaard, Villanova University Charles Widger School of Law, “Administrative Enforcement and the Rule of Law”
- Anthony Moffa, University of Maine School of Law, “The Sustainability of Traditional Knowledge”
- Al Lin, UC Davis School of Law, “Courts and Trump’s War on Science”

Panel: “Sustainable Power: Law & Policy Initiatives”

Room 240

- K.K. DuVivier, University of Denver Sturm College of Law
- Steven Ferrey, Suffolk University Law School
- Gina Warren, University of Houston Law Center
- Steven Weissman, Berkeley Law

Schedule



Panel: “Food, Household Products, and Sustainability”

Room 250

- Jane Cohen, University of Texas School of Law
- Andrea Freeman, University of Hawaii William S. Richardson School of Law
- Ernesto Hernandez-Lopez, Fowler School of Law, Chapman University
- Steph Tai, University of Wisconsin Law School

3:10–4:30 p.m.

Break-out Session #4

Panel: “Citizen Monitoring”

Room 150

- Ann Eisenberg, University of South Carolina School of Law
- Robert Glicksman, George Washington University Law School
- Lee Paddock, George Washington University Law School
- George Wyeth, George Washington University Law School

Panel: “Sustainable Futures: Sociotechnical Imaginaries in National Commitments to the Paris Agreement”

Room 250

- Daniel Chow, Ohio State University Michael E. Moritz College of Law
- Kristen van de Biezenbos, University of Calgary Faculty of Law
- Gregg Macey, Brooklyn Law School
- Melissa Mortazavi, University of Oklahoma College of Law

Freestanding Presentations: “Sustainability, Land Use, and Natural Resource Management”

Room 240

- Paolo Davide Farah, West Virginia University Rockefeller School & College of Law, “Conflict between Property Rights and Mineral Rights in a Comparative Perspective”
- Jessica Owley, SUNY Buffalo Law School, “Who is the America in America First: Shifts in Land Conservation in the Trump Administration”
- Jonathan Rosenbloom, Drake University School of Law, “Fifty Shades of Gray Infrastructure: Land Use & the Failure to Create Resilient Cities”
- Kellen Zale, University of Houston Law Center, “Progressive Cities and Reactionary States: Local Innovation, State Control, and the Politics of Sustainability”

Morrison Prize

2018 Morrison Prize Contest Winner

Energy Partisanship



Hari M. Osofsky & Jacqueline Peel
65 EMORY LAW JOURNAL 695 (2016)

Abstract: Whether the topic is the Paris Agreement on climate change, greenhouse gas emissions from power plants, the Keystone XL Pipeline, hydraulic fracturing, offshore drilling, or renewable energy, much of the U.S. policy dialogue about energy and climate change is deeply partisan. Republicans and Democrats debate individual issues in vitriolic sound bites that indicate minimal common ground. For example, officials favoring robust action on climate change are charged with engaging in a “War on Coal.” Those opposed are labeled “members of the Flat Earth Society.” Set against these dysfunctional climate and energy politics, how can progress be made? For people who accept the science of climate change, this has become a critical question. An emerging body of psychological research indicates that strategies attempting to persuade those with opposing views with additional scientific evidence have limited effectiveness. Providing more information does not change minds because (1) it does not take moral and cultural worldview differences into account, or (2) it is presented in ways that do not adequately acknowledge how people’s perceptions of the relatability and trustworthiness of communicators shape their acceptance of that information.

This Article provides a novel analysis of how to make progress on energy and climate change issues by translating this emerging psychological research into a framework for action. It proposes two interconnected strategies — substantive and structural — for moving past imbedded partisanship and political dysfunction. Substantively, this Article argues for refocusing regulatory efforts on areas where a greater degree of consensus may be possible, such as economic development and disaster resilience. Structurally, it proposes a shift to arenas that are less gridlocked by energy partisanship than the legislative branch of the federal government, such as other branches of the federal government, state and local levels, and corporate and private sector actors. By drawing on case studies and empirical data, including interviews with key stakeholders, this Article illustrates possibilities for progress under this framework.

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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