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NRULPC Newsletter Vol. 7, No. 3

September 30, 2024

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Co-Directors' Message

Hello NRULPC friends,

This issue provides updates on some of the great work the clinic students are involved in. First is their contributions for saving raptors on a Southern Arizona ranch and secondly their active learning about Arizona's General Stream Adjudications. The Mining Law Summit is coming up on November 7. It is a free virtual conference which is open to everyone. A brief agenda and a registration link are below. Lastly, is an informative article on community agreements written by our NRULPC fellow.

Enjoy the Fall with (hopefully) cooler weather coming soon!

Ethan and John



Clinic Students Work with Ranchers to Save Raptors

John Barrett

The Natural Resource Use and Management Clinic gives law students the opportunity to interact with ranchers throughout Southern Arizona and provide legal advice and support related to projects on their land. Two of the clinic's students recently worked with the owners of the Cochise Stronghold Ranch on a unique issue. Located at the foot of the Dragoon Mountains, Cochise Stronghold Ranch is a ~550 acre cattle ranch with a rich cultural history that dates back thousands of years. The owners of the ranch are committed to keeping the property intact and undeveloped (in 2023, the U.S. Forest Service dedicated funding to encumber the ranch with a conservation easement through the Forest Legacy Program) to protect both its archaeological resources and healthy Madrean pine and oak woodlands.



Last year, law students in the clinic helped prepare and negotiate a lease between the Cochise Stronghold Ranch owners and the Arizona Raptor Center. The Arizona Raptor Center is a non-profit organization that rescues and rehabilitates injured

predatory birds like hawks, owls and eagles. Under the lease, Arizona Raptor Center has built a temporary facility that will be used to nurse injured birds back to health for release into their natural habitat. The work not only gave students an opportunity to practice their transactional skills, but to complete a project with a meaningful impact—since the lease was completed and the facility built, staff from the Raptor Center have release four injured or orphaned Golden

Both the ranch owners and the Arizona Raptor Center were happy with the students' work. Doug Payne, owner of the Cochise Stronghold Ranch, said the students "were fantastic to work with and very knowledgeable about what needed to be done. They were professional in their approach and covered all of our concerns and added many valuable suggestions which were incorporated into the lease."

Photos used with permission from the University of Arizona Natural Resource Use and Management Clinic.



NRUM Students Spent a Day Learning About Arizona's General Stream Adjudications

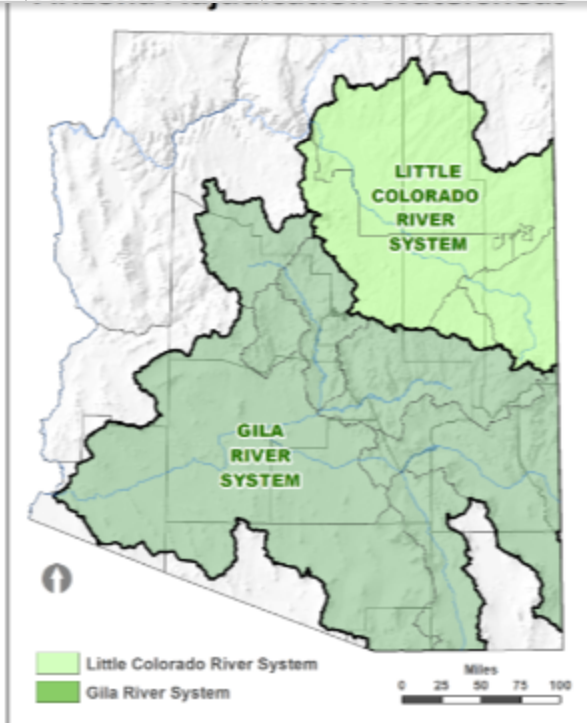
Jennifer Wendel

On September 6th, students in the Natural Resource Use and Management Clinic (NRUM) spent the day learning about Arizona's general stream adjudications from some of the top water law attorneys across the country.

Most western states have initiated "general stream adjudications" to quantify and define all surface water rights in their states. A general stream adjudication is essentially a massive court case that requires all surface water right users within the watershed boundaries to file a water right claim in court. Claimants in general stream adjudications may have common law water rights established prior to state permitting laws, federal water rights (litigated in state court via the McCarran Amendment) that are reserved but unquantified, or surface water rights permitted under current state law.

Through the Arizona Adjudications Project, NRUM students may represent claimants in Arizona's two general stream adjudications: the Gila River Adjudication and the Little Colorado Adjudication.

Attorneys from around the country joined NRUM students on September 6th to



adjudications. Students heard from Special Master Thorson, a longtime Special Master in Arizona's adjudications, on the genealogy of western adjudications. Mark Widerschein, an attorney with the Environmental Natural Resource Division of the Department of Justice in Washington, D.C., discussed federal reserved water rights in adjudications. Robyn Interpreter, half of the Montgomery Interpreter law firm in Phoenix, reviewed the history of and current issues with Indian

water rights. Mark McGinnis, counsel at Salmon, Lewis & Weldon and longtime outside adjudication counsel for the Salt River Project, introduced students to Arizona's adjudications.

NRUM students currently represent adjudication claimants across the state in the San Pedro, Verde, and Silver Creek watersheds. Students help to review water rights claims, file updated water rights documents, and represent clients in front of the Special Master in adjudication court.

Image source: Arizona Department of Water Resources

NINTH ANNUAL MINING LAW SUMMIT—2024

THE MINING-WATER INTERFACE:

The Role of Good Neighbor or Impact-Benefit Agreements

The prospect of mineral development and the potential impact on neighboring water uses can be a divisive issue. The social license for mining operations has, indeed, generated significant attention in the past decade. The 2024 Mining Law Summit looks at these concerns and the use, and limits, of voluntary company/community agreements.

This free virtual conference, on **Nov. 7, 2024**, will combine recorded presentations from internationally recognized authorities with live participation in answering questions and providing commentary.

FIRST TOPIC:**Water and Mining Operations—From the 19 Century to the Present. Looking at the historical backdrop.**

Mining Historians and water lawyers will discuss the history of water rights acquisition for mining operations. **John Lacy**, Director, Global Mining Law Center, James E. Rogers College of Law, UArizona, **Eric Nystrom**, Assoc. Professor of History, Univ. of Nevada–Reno and **Carlos Ronstandt**, Law Offices of Carlos Ronstandt.

SECOND TOPIC:**Hydrogeology/Mine Water 101: From Feasibility Studies & Permitting to Water Supply & Dewatering**

Tim Bayley, Principal Hydrogeologist, Montgomery & Assoc., will provide the technical background necessary to evaluate the technical aspects of water use in mining operations.

THIRD TOPIC:**Community/Company Agreements in the Americas: Negotiation and Implementation**

This topic will provide integrated perspectives on notions of (good) neighborliness in the context of water and mining for an improved, comprehensive risk assessment and concomitant of stakeholder engagement. This topic will be presented by **Ginger Gibson**, Ph.D. (The Firelight Group, British Columbia) with commentary from **Ana Bastida, Ph.D.** (Univ. Of Dundee—Centre for Energy, Petroleum and Mineral Law and Policy).

FOURTH TOPIC:**Capacity-Building for Community Agreements**

This topic will combine the current efforts to combine expertise available at the University of Arizona to provide independent assessment and planning work at a community-engaged level for mineral development. Participants to be announced.

Mining, Groundwater, and Community Agreements

Colin McKenzie

Two of the handful of courses all first year law students take are property (law) and contracts. The latter field of law is a genetic element of commerce; the former is a foundational component of natural resources law and policy in the western United States. On a personal level, having been born and raised in a water scarce, groundwater dependent small town in the Four Corners area with

my “1L” property course. Simply but powerfully, I read in a footnote in the assigned casebook, an abstruse mention of a “conversation” metaphor of “property.” Jesse Dukenmieier et al., *Property* 17–18, n.7 (8th ed. 2014). It was a mere citation with the briefest parenthetical explanation, in a discussion of acquisition of property as by the doctrine of discovery: Jane B. Baron, *The Contested Commitments of Property*, 61 *Hastings L. Rev.* 917 (2010).



I’ve pursued that striking notion ever since. And I’ve come to understand something of those inherently conversational, indeed relational, aspects of “property.” See, e.g., Joseph Singer et al., *Property Law: Rules, Policies, and Practices at Pt. II* (2022) (including relevant chapters, one on “land use and natural resource regulation,” under the heading, “relations among neighbors”). And so, relationship and conversation—or their lack, as I’ve come to learn—are nearly always at the forefront the biggest issues and controversies in a more expansive conception of the field of natural resources law and policy. This perspective has held true, no less, in two areas of applied research that I’ve been focusing on lately, in “rural” groundwater (management) and mining (social license). Both areas are also the subject of exciting new collaborative work between the NRULPC and Natural Resource Use & Management Clinic.

The first area of collaborative work has to do with the ongoing conservations—literally—regarding rural groundwater reform in Arizona; the second, community agreements—sometimes referred to as “good neighbor” agreements—in the mining context. Both involve transactional, that is to say, relational, elements, a complement of sorts to the core *property* law characterizing much of natural resources law (cf. groundwater law, viewed in paradigmatic terms, as rules of property which allocate the “water resource”; see also Stan Dempsey’s characterization, in a recent edition of this same newsletter—vol. 7, No. 1—of the General Mining Law of 1872 as fundamentally “a land tenure law”; that commentary in response to a Sept. 2023 federal Interagency Working Group [report](#) on the topic of mining law reform. For the benefit of non-

Where things get interesting is with the transactional, what might be called *collaborative* conservation, component. (Conservation, after all, can refer to either the *use* or *preservation*—or both—of a given “natural” resources; in any case, it’s a term of art which, throughout, is an intensely placed-based, culturally mediated idea and practice.) Such “multistakeholder” efforts, to use a clinical term, are naturally channeled through the instrument of a contract—for example, an interagency memorandum of understanding (MOU).

For now, I’ll highlight but two illustrative examples in the same sphere as the Center–Clinic collaboration I mentioned, namely investigations into “rural groundwater” and the use of “good neighbor agreements” between mining companies and neighboring community and stakeholders. This year, Arizona operating mining concerns Resolution Copper LLC (RCL) and South32 Hermosa both have community agreements—in different stages. In the case of RCL and stakeholders, a signed agreement followed years of work. In the latter case, South32, issued a press release highlighting nascent efforts towards a “[community benefits and protection agreement](#),” alongside Santa Cruz County, and the Towns of Nogales and Patagonia.

In RCL’s case, the company announced this past March, together with various stakeholder, a signed [good neighbor agreement](#). One signatory is the Town of Superior, which as it happens, also just approved at its regular [September 12 Council Meeting](#), a “Letter of Intent on Water” (discussion on this [agenda item \[no. 8\]](#) starts in the records hyperlinked here, at 49min., 45 sec.). There are, in all likelihood, important lessons from Town of Superior’s case to be brought to bear in the context of context of South32 operation’s in the backyard of Patagonia and Nogales. For the exchange to be fruitful, as a sharing of best practices and hard lessons, it will occur in conversation, that most human of modalities; frustration and paradox are to be expected—deeper insight and relationality, too, at least potentially.

The same type of conversations marking negotiations of company/community agreements in the mining context, hold demonstrated promise too, in the space “rural groundwater reform.” See, e.g., Lincoln Inst. for Land Policy, Documentary Short, Agriculture and Water in the West: a Community Takes Charge (Sept. 2023), available [here](#) via YouTube. To wit, as expressed by the MOU (“memorandum of understanding”) that grew out of a successful

groundwater conservation is bring framed as a matter of “partnership and collaboration”—inherently relational, conversational, as among (literal) neighbors. Id. (fast forward to approx. 29min., 50 sec. in the documentary short). And so, conceptual connections and literal conversations between these two distinctly critical domains in Arizona's natural resource landscape—groundwater and mining—offer unique, potentially powerful insights. Where, as biodiversity teaches us, diversity is thoroughly normative, even healthy, on this planet, so, too, it can be argued in the fundamentally social worlds of natural resources law and policy, among and between outwardly disparate areas of political economy/political ecology, like mineral development and irrigated agriculture. Cross-pollination, anyone?

New Resources on the NRULPC Website and Blog

Website

- [Regulatory Roundup](#) - Issue 12, July/September 2024, to be released soon.

Western Lands, Western Waters Blog

- No new posts at this time.

Natural Resource Users Law & Policy Center (NRULPC)

The Natural Resource Users Law and Policy Center (NRULPC) is a creative partnership of the University of Arizona's James L. Rogers College of Law and Cooperative Extension that grew out of grassroots discussions. The Center's aims are to collaborate with stakeholders, mentor student clinicians and fellows, provide scholarly legal and policy analysis, and address the underrepresented law and policy needs of the natural resource community of Arizona and the West.



NRULPC Website

The NRULPC website provides information on the about the center, student programs, leadership and staff, out publications and the Advisory Board.

- Vol. 1, Number 1 - November 2, 2017 - Welcome to the First NRULPC Newsletter!
- Vol. 1, Number 2 - December 22, 2017
- Vol. 1, Number 3 - February 9, 2018
- Vol. 1, Number 4 - March 19, 2018
- Vol. 1, Number 5 - April 30, 2018
- Vol. 1, Number 6 - May 31, 2018
- Vol. 1, Number 7 - July 24, 2018
- Vol. 2, Number 1 - October 19, 2018
- Vol. 2, Number 2 - December 20, 2018
- Vol. 2, Number 3 - February 25, 2019

The first issue of the NRULPC newsletter was released November 2017. It is published at various times of the year, but generally about every two months.



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Western Lands, Western Waters

Hot topics in natural resource law and policy affecting the American West

Blog

Our Blog posts are carefully researched and written by NRULPC Clinic students.



Regulatory Roundup

Summarized updates to law, policy, legislative and regulatory changes. Information made available several times a year.

Would you like to be on our NRULPC listserv? If so, please contact [Sheila Merrigan](#).



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