



NRULPC Newsletter Vol. 7, No. 1

February 26, 2024

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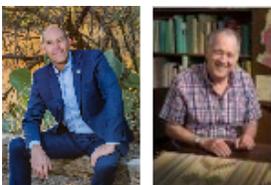
Co-Directors' Message

Greetings,

In this issue you will meet our new director of the Natural Resource Use and Management Clinic, John Barrett. John provides some personal information as well as an update on the Clinic students.

John Lacy provides some information on Stan Dempsey along with Stan's comments regarding the General Mining Law of 1872. We get a little peek at what will be happening with the *Manual for Determination of Status and Ownership; Arizona Mineral and Water Rights* later this year and lastly, Jennifer Wendel gives us a look at progress made on the Water Adjudication project.

All the best,
Ethan and John,
Co-Directors



Clinic Update

John Barrett

In October 2023, John Barrett became the Director of Natural Resource Use and Management Clinic (NRUMC) at the University of Arizona's James E. Rogers College of Law. The NRUMC is one of several clinical programs at the law school that offers students and their supervisory faculty the opportunity to deliver pro bono legal services to people throughout Arizona. Launched in 2018, the NRUMC directly engages students with the public agencies charged with managing land and water resources, local and national non-profit organizations leading conservation efforts, and the communities and rural families whose livelihoods depend on the sustainable use of the state's natural resources. In the NRUMC, students are encouraged to consider the positive impact of collaborative solutions to divisive environmental issues. The NRUMC has close ties to the University of Arizona's Cooperative Extension Program and its College of Agricultural, Life and Environmental Sciences, and the students' legal work may be informed by subject-matter experts from those departments.



Before joining the faculty at the law school, John was an attorney in private practice in Tucson for ten years where he focused on litigation, particularly in matters related to commercial contracts, real estate, and natural resources. John stepped away from legal practice for several years when he focused on nonprofit work in both Illinois and Arizona. In Illinois, John worked at a small environmental arts and education organization. Closer to home, John was the Land Protection Director at the Arizona Land and Water Trust where he worked closely with both rural landowners and Federal agencies (including the Departments of Agriculture, Defense and Interior) to protect over 16,000 of threatened rangeland throughout the state. During that time, John frequently spoke at community events to talk about conservation programs and he looks forward to not only continuing those discussions as Director of the NRUMC, but engaging students in the process.

Students in the NRUMC have unique backgrounds, but they have all completed at least one year of law school and share an interest in the laws and policies that shape how natural resources such as water, forests and rangelands are protected and managed in an era defined by sustained drought, habitat loss and persistent debate about the use of public lands. Students are mentored by NRUMC attorneys while they work directly with clients and can provide a range of services. If you have questions about the NRUMC or would like to know more about the services it can provide, please contact John at barrettj@arizona.edu or (520) 621-7671.

Comments on Mining Law

Stan Dempsey comments reprinted with permission to John Lacy

In our last Regulatory Roundup ([Issue 10](#)) we included a summary of the Department of Interior-led Interagency Working Group report that included, among other things, a recommendation to replace the General Mining Law with a leasing system. The following was taken from a letter provided to the task force submitted by Stanley Dempsey, a retired lawyer and mining executive who worked in the mining industry for more than 60 years. Mr. Dempsey has worked as a geologist, engineer, lawyer, environmental officer and executive and involved exploration for molybdenum, tungsten, copper, gold, silver, platinum, palladium, nickel, lead, zinc, and geothermal energy. His exploration and mine development work involved projects in the United States, Canada, Mexico, Nicaragua, Chile, the United Kingdom, Portugal, Greece, Bulgaria, Georgia, Russia, Fiji, and Australia. His comments follow:

Do not revise the General Mining Law of 1872

The General Mining Law of 1872 is a land tenure law. It includes a large body of case law and administrative interpretation. It may have been dealt with by the United States Supreme Court more than any other statute.

The abundant case law generated by the 1872 Mining law has settled almost all questions of interpretation, giving certainty to miners at a time when our nation needs critical minerals for the energy transition.

This law incorporates the experience of miners all over the world by incorporating the customs and practices of miners in the 1866 Lode law, the 1870 Placer act and ultimately in the 1872 law. In particular, it incorporates the concept of self-initiated rights, reward for discovery, and a requirement of diligent development.

The General Mining Law of 1872, as amended from time to time over the years, provides the basis for a bountiful mining industry in the United States. This nation is the third largest producer of gold in the world. Almost all of that production is from mining claims perfected under the 1872 mining law. Likewise, most of this country's copper comes from 1872 Act mines.

Self-initiation by any citizen, or person who has declared their intention to become one, gives the United States the advantage of having free exploration by anyone who wishes to explore for minerals. This was notable during the WWII and Cold War years that followed. This country was thought to be barren of uranium, until private citizens were once again allowed to stake mining claims. And enough uranium was discovered to construct the first atom bomb and nuclear power plants. The free exploration that the US receives from private corporations and individuals amounts to hundreds of millions of dollars a year. (\$345 million in 2018). Also, an oft repeated story tells us that individuals are often the discoverers of the great mines of this nation. Discoveries of major uranium deposits by last in his college geology class Charlie Steen (the Mi Vida Mine in Utah), and janitor and weekend prospector Fred Schwartzwalder (the Schwartzwalder Mine in Colorado) are good examples.

Given the dire need for critical minerals for the energy transition and achievement of climate goals, it is clear that this is no time to be changing the General Mining Law. There are critical minerals available in this country if we are allowed to produce them. There is no need to be dependent on other countries for critical minerals. Tenure laws call for stability because of the large investments that are made in a real property setting.

Don't put environmental laws in tenure laws.

Tenure laws are difficult to change as proven by the Sesquicentennial of the 1872 mining law. Dean Roscoe Pound of the Harvard Law School helped us understand that it is not wise to put environmental regulations in tenure laws. He reasoned that environmental regulations need to be changed frequently as we learn how to protect the environment.

Environmental regulation of mining claims today often involves preparation of an environmental impact statement as called for by National Environmental Policy Act (NEPA). NEPA provides the general policy which is appropriate for mineral exploration and production. However, our version in the United States has not kept up with strategic environmental impact statement best practices in European countries. NEPA is antiquated and needs to be overhauled. It's NEPA that needs revision, not the General Mining Law of 1872.

Coming Soon

NRULPC Co-director John Lacy, Paul Tilley, member of the Natural Resources Practice Group of DeConcini McDonald, Yetwin & Lacy, P.C., and Michal Kotutwa Johnson, NRULPC Affiliated Faculty are in the process of updating and revising John Lacy's 1999 *Manual for Determination of Status and Ownership; Arizona Mineral and Water Rights Fourth Edition*. Paul Tilley will be updating the BLM records section and Michael Kotutwa Johnson will be adding a new section on Tribal Records. The updated manual is planned to be released sometime in the summer.

Current Citation: Lacy, J.C., 1999, Manual For Determination Of Status and Ownership; Arizona Mineral And Water Rights - Fourth Edition. Arizona Dept of Mines and Mineral Resources, Special Paper #23 with Circular 126, Guide to Online Land Status Records, 2007. <http://hdl.handle.net/10150/628883>

Arizona Adjudications Project

Jennifer Wendel

The Arizona Adjudications Project is an initiative of the University of Arizona's Natural Resource Use and Management Clinic. Small landowners in Arizona's general stream adjudications may apply for free limited representation through the Project.



Arizona and most other western states follow the prior appropriation “first in time, first in right” doctrine. In a time of drought or overdraft, earlier “senior” rights are filled first before newer “junior” rights. Before 1919, there were few rules on how to obtain a surface water right in Arizona. In 1919, Arizona enacted rules that require surface water users to get a permit from the state to appropriate surface water. Water rights established prior to 1919 have largely not been reviewed or documented in an accessible format. Without proper review and documentation, it’s impossible to know who was first in time, first in right, making enforcement of current surface water rights

difficult to impossible.

The stream adjudications are court proceedings that catalog all surface water rights at a snapshot in time. All surface water users within the adjudication boundaries must file a Statement of Claimant with the court and claim their water right. Through an adjudication, all surface water rights, both pre and post 1919, are organized in a list according to their “priority date,” the date the water was first put to beneficial use. When an adjudication is complete, the court issues a decree that confirms the elements of each surface water right (i.e. priority date, source of water, point of diversion, quantity...). After the adjudication court issues a decree, all surface water rights can be enforced by their priority date.

Arizona has two ongoing general stream adjudications: the Gila River Adjudication and the Little Colorado River Adjudication. All surface water rights along these rivers and their tributaries must file a claim in the adjudication to preserve their right. In Arizona, surface water uses include subflow water, or water pumped from wells close enough to a stream that the court determines the well is drawing surface water.

After months of preparation, the Arizona Adjudications Project opened to clients in January. Law students in the Natural Resource Use and Management Clinic act as junior attorneys under the Project Director and Clinic Director and take on clients with surface water claims in the adjudications.

WHO WE SERVE:

- Individuals entitled to a surface water right claim in the Gila or Colorado River Adjudication
- Claimants with small water rights
- Small landowners
- No current legal representation

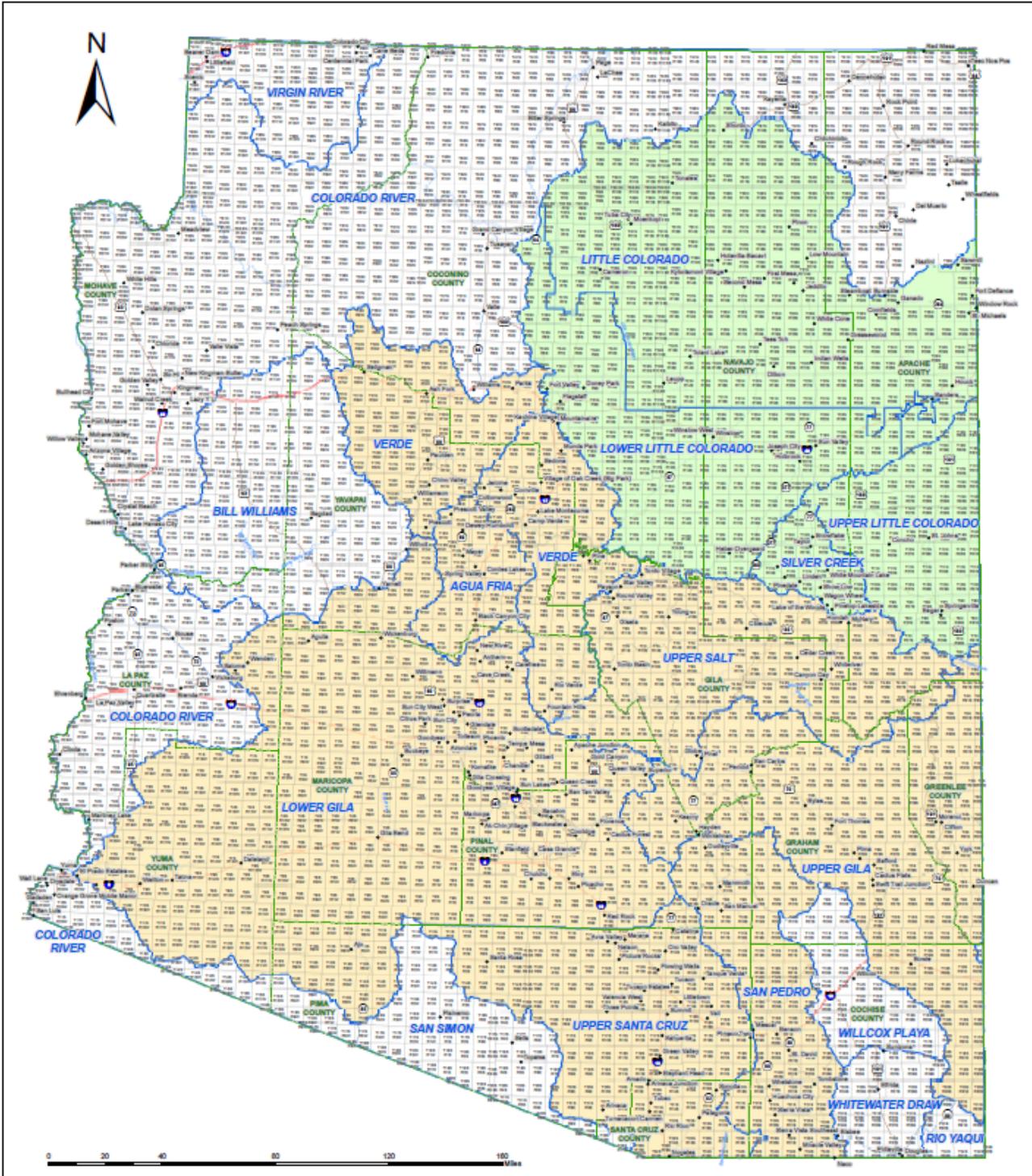
WHAT WE DO:

- Legal review of the water right claim
- Evaluate how the adjudication affects the water right
- File adjudications claims and other necessary water right documents with the Arizona Department of Water Resources and the adjudication court

WEBSITE: law.arizona.edu/azwaterrights

TELEPHONE:
(520) 621-6722

EMAIL:
Law-azadjudicationsproject@arizona.edu



Adjudications Watersheds

State of Arizona

Cities over 250 people*

*Some cities may not be visible in populated areas due to labeling

- Gila River Adjudication
- Little Colorado River Adjudication
- Colorado River Adjudication
- County
- Township/Range
- Watershed
- Stream or River
- City or Town
- Interstate
- US Highway
- State Highway



**PROTECTING ARIZONA'S
WATER SUPPLIES
for ITS NEXT CENTURY**

Document Path: U:\AZU\GIS\Library\Adjudications\Map\ADJUC_WATERWBSHED.mxd

New Resources on the

NRULPC Website and Blog

Website

- [Regulatory Roundup](#) - latest issue was released December 2023

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.

Newsletter and Other Resources

Newsletters

- 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

Newsletter

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.



HOME ABOUT VIEW BY TOPIC VIEW BY SEASON OTHER BLOGS CONTACT US

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.



Time sensitive law and policy information.

Regulatory Roundup

Time sensitive policy and legislative information. 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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