

## NRULPC Advisory Board Meeting Summary Report April 29, 2019

### Participants:

#### In person:

- Staff: John Lacy (Center Co-Director), George Ruyle (Center Co-Directors), Bethany Sullivan (Clinic Director), Dean Marc Miller (College of Law), Megan O’Leary (College of Law), Celeste Steen (Office of the General Counsel), Jeff Eisenberg (Consultant), Barbara Hutchinson (Communications Manager), Sheila Merrigan (Communications Assistant)
- AB members: Joe Willis (Advisory Board Co-Chair), Andy Groseta (Advisory Board Co-Chair), Tom Davis, Jeff Menges, Paco Ollerton, Bill Plummer, Alan Seitz, Doyle Shamley, Stefanie Smallhouse
- University of Arizona students: Ashley Daltrey, Hannah Chute, Allie Whitehill

#### Virtual:

- AB members: Ashley Ellixson

#### Not Attending:

- AB members: Matt Bingham, Don Butler, Linda Chezem, Kirk Johansen, Sarah Roubidoux Lawson

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The April 29<sup>th</sup> Advisory Board meeting was both informative and productive. NRULPC and Clinic staff members provided updates on all activities (PPT available on the NRULPC website: <https://extension.arizona.edu/nrulpc> ; **see also summary activities report below**), with Advisory Board Chair, Joe Willis, and co-instructor, Celeste Steen, providing a course report. Center



projects/matters were summarized with a more extensive presentation given on the new WOTUS rule by NRULPC consultant, Jeff Eisenberg. This was followed by presentations by Advisory Board members, Ashley Ellixson, and Stefanie Smallhouse. Dean Marc Miller gave an excellent budget and development overview along with College of Law Development Officer, Megan O’Leary. Dean Miller

noted that it is hard to find programs with more positive impact and “bang for the buck” than this great collaboration. To this end, he expressed keen interest in finding a way to keep going, especially for the students. Lively small-group discussions followed in the afternoon and resulted in many ideas that will guide future activities.

**WOTUS:** Jeff Eisenberg’s presentation on WOTUS was fact-filled and covered many aspects of the new rule. It was based on his work with numerous clients and stakeholders such as the City of Benson and the Altar Valley Conservation Alliance. Jeff noted that while it is important to protect clean water, there is a disagreement between those who lean toward protection and those who are concerned about property rights. He outlined problems with overlapping jurisdiction between agencies and municipalities. If the new rule is approved, ephemeral streams could be eliminated.

**TN VISA ISSUE FOR DAIRY INDUSTRY:** Ashley Ellixson provided an overview of the TN Visa issue. This is a dairy labor project that the United Dairymen Association (UDA) of Arizona has collaborated on with Dr. Duarte, Extension Specialist at the University of Arizona. The goal is to find a solution to visas for milkers from Mexico who cannot currently enter the U.S. Dr. Duarte has been developing a certification program that would help make it possible for milkers to work in the U.S. under a TN visa. However, the Department of Agriculture is holding to the upper level degree requirement for a TN visa so that option is not viable at this time. UDA is continuing to support immigration reform at the national level.

**DROUGHT CONTINGENCY PLAN:** Stefanie Smallhouse reported on key points of the Drought Contingency Plan (DCP), especially those affecting Pinal County farmers. Tracing the history of various settlements that have led up to the Plan, Stephanie began with the 1980 Groundwater Management Act and noted the Gila River Indian Community settlement of 2004 as well as the Drought Guidelines of 2007. In 2018 a 40-member Steering Committee was established to develop the DCP that finally included agriculture interests. Stephanie provided insights into the challenges and frustrations of negotiating among various groups with their divergent needs and the apparent low priority given to farming.

### **SCIENCE AND LAW SYMPOSIUM DISCUSSION** (Moderator: Joe Willis)

Advisory Board members held a lively discussion on issues that surrounding the use of science on litigations. The idea of the NRULPC organizing a special symposium on the subject was posed to the members to gain their perspectives. The following are just a few of the ideas suggested discussion:

#### Science and Law Issues

- Where does science come up in natural resources legal issues? Agency issues?
- What constitutes sound science?
- Whose science do you listen to?

- Science may impact both sides of an issue, i.e. with WOTUS. Is there good and bad science?
- What if important aspects of science are left out of the discussion? How to fix that?
- What is the definition of “science” and “scientific methods”?

### Potential Topics

- How to focus on studies v. perception?
- How does the public get something into the record with science and agencies?
- How do agencies decide the process for different levels/regulations?
- How to determine timeliness / staleness of data?
- What is subjective vs. objective

Possible speakers were discussed along with a general outline for a symposium agenda. NRULPC staff will coordinate the logistics for a symposium and will call on Advisory Board members to assist.

### **FUNDRAISING DISCUSSION RESULTS** (Moderator: Jeff Menges)

Questions posed to Advisory Board members: (1) What type of funds do we need? (2) What information is needed to give to potential donors? (3) Who are the potential donors? and, (4) What are the best ways to get the word out about the NRULPC? Responses included:

1. General operating money is difficult to ask for; it is easier to “sell” a product. Thus, it was suggested that Board members introduce their various constituencies to NRULPC’s important services. Perhaps, holding an “Open house” with such corporations as CAT and John Deere was also suggested. Total per year to maintain the NRULPC is about \$450,000; or the equivalent of a \$4-5 million endowment.
2. White papers geared towards different groups could help gain new funding. These might describe specific matters such as DCP, WOTUS, and the appeals handbook. Also, members saw a need to have materials that clearly explain how the Center and the Clinic collaborate and coordinate activities, and that demonstrate their positive contributions.
3. Follow-up with potential donors and submission of grant proposals. Actions with potential Donors: (1) Follow-up with previous small donors; (2) Submit grant proposals to such groups as the Public Lands Council (agencies and NGOs); (3) Identify target companies and foundations who accept funding proposals; and (4) Enlist more coordination and support from UA Development Directors to “sell” the Center; Board members to suggest names/targets.
4. Key messages about the NRULPC: This Center and Clinic are unique entities. Board members were called upon to be PROACTIVE in helping identify and contact possible donors.

## STUDENTS QUOTES ABOUT ADVISORY BOARD MEETING PARTICIPATION



*"The NRULPC Advisory Board meeting was a great opportunity to hear about all of the different projects the NRULPC is working on. I was surprised to learn just how many issues are being tackled by the NRULPC and how many different stakeholders are interested in these problems and are working on solutions. The more stakeholders, the more creative the solution needs to be, and I enjoyed seeing all of the different ideas discussed in a collaborative environment."* Allie Whitehill

*"I enjoyed getting to meet the advisory board. I think it really put our work with the Clinic into perspective as part of a larger picture. I appreciated that they were so interested in what we had to offer, too. It was a very collaborative meeting!"* Ashley Daltrey

## KEY NOTE SPEAKER – BILL MYERS



We were treated to a most interesting presentation by our keynote speaker Bill Myers, Partner at Holland & Hart in Boise, ID specializing in energy, natural resources, and public land law. As noted in the agenda: Presidents have used their authority 20 times since the passage of the Antiquities Act in 1906 to diminish national monuments. Not until December of 2017 when President Trump invoked the Act to diminish the size of President Clinton's Grand Staircase Escalante National Monument and President Obama's Bears Ears National Monument has the presidential power to diminish a National Monument been challenged in court. Within hours of the President's proclamations, five lawsuits were filed in federal court seeking to undo his actions. In his talk, Bill first provided a detailed history of how the Antiquities Act of 1906 has performed over time. Then, turning to the current situation, he provided a summary of the procedural and substantive issues in the recent cases from his perspective as counsel to intervenor defendants. Bill pointed out that if there is a motion to dismiss, this will mean the Dept. of Justice wins and "that is it"! However, there is still a possibility that an appeal could bring this issue to the Supreme Court.

## ACBS/LAW 411 COURSE REPORT (Joe Willis & Celeste Steen)

Twenty students, all juniors and seniors, made up the ACBS/Law 411 class this Spring semester. Several were from agriculture backgrounds. Some were first generation college students. Most were from Arizona, but Oregon, California, and Florida were also represented. Only a handful

were committed to go on to law school although others were still considering it. Celeste Steen was a co-instructor with me.

The course could be described as a mile wide and a foot deep on the subjects covered but that foot did get adequate coverage. Substantial focus was on the federalism system and constitutional law as well as administrative law in general. Then we shifted to discrete areas of law including real estate transactions (a new addition by Celeste), animal welfare, and food safety. Dr. Chandra Rock, with University of Arizona Cooperative Extension, explained the Yuma lettuce problem and detection systems used to attempt to identify and isolate causes. Other outside speakers presented on current issues in cattle growing, dairy farming, regulatory laws such as the Endangered Species Act, and water law including the Drought Contingency Plan. A field trip was held at the Vera Earl and Empire ranches with Ian Tomlinson spending over half a day outlining the business operations of a major cattle grower with interstate operations. As always, I come away with more than I put in and appreciate the opportunity to teach this class.



## **NRULPC AND CLINIC OVERALL SUMMARY ACTIVITIES REPORT – April 2019**

### 2018 Center Projects

- Rx burning liability issues (developed a legal framework for the use of prescribed fires by private landowners)
- Yuma Island land and water status
- Labor shortage crisis in dairy industry (TN Visas for Dairy Technicians, case law review)
- Agency for Toxic Substances and Disease Registry (ATSDR) jurisdiction over confined animal agriculture
- Advised landowners in the Gila River Valley about their legal options to optimize the use of their water
- Researched memorandum on the status of open range laws

### Current Center Projects

- NEPA tutorial and handbook to help Extension agents best serve user interactions with federal agencies in getting projects authorized
- Developing process for mediation for grazing allotment disputes
- Assessment and allocation of vacant grazing allotments
- Analysis of CNF-BA for livestock grazing program
- Analyses of new WOTUS rule

### Mining Law Center – Master’s Degree Programs

- LLM: 24 units for graduate lawyers

- MLS (Master of Legal Studies): 30 units for graduate natural resource and mining professionals
- Non-credit executive training on mining and public land law subjects
- Providing course options for law students in natural resource related subjects

#### Mining Law Center – Online Training

- Background (technical or legal)
- Basic mining law (domestic and international)
- Acquisition issues
- Global taxation
- Environmental law
- Sustainability/Engagement
- Course on Developing Public Lands Under the National Environmental Policy Act
- Course on Public Land Use
- Available to students in the Clinic, students in CALS and as executive training
- Video postings of lectures and interviews on current topics
- Colorado River conservation
- Waters of the United States

#### **Clinic Activities**

- 6 JD students currently enrolled in Spring 2019
- 8 JD students have enrolled for Fall 2019
- Additionally, 1 JD student doing a hybrid externship/clinic enrollment over Summer 2019 with Idaho Forest Group
  - \*Student internships a great way to get students into field; if have ideas for possible internships, can work with Clinic and Center to circulate to students and facilitate.
- Weekly seminars: students meet in classroom, lessons on substantive law, project rounds, student presentations, guest lecturers, exercises
- Individual projects: students work alone or in groups on projects for the NRULPC, Cooperative Extension, tribes, and other client organizations.
- Weekly individual meetings with Director, in addition to meetings with NRULPC, clients, and University experts.

#### **Example Clinic Projects**

- Waters of the United States project
  - How proposed rule will change permitting on the ground in Arizona
  - Several students involved; researching how WOTUS evolved over time, comparing old rules to new proposed rule, analyzing how Arizona has or will assume CWA programs
- Watershed restoration/land improvement project

- Hot topics blog
- Administrative Appeals Handbook
- NEPA Handbook
- Guest teaching in rangeland management course

**ACBS/Law 411 Joint Course:** “An introduction to Agricultural Law and Policy for the Modern Day Natural Resource User”

- Class for undergraduates
- Co-taught by Celeste Steen, Esq. and Joe Willis, Esq.
- Overall purpose to promote law as a career option to students working on degrees associated with natural resource use