



Environmental Law Program  
*Emmett Clinic*  *Policy Initiative*

# Annual Report 2016-2017

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## Introduction

The Harvard Environmental Law Program is a full-service teaching, research, and policy program housed at Harvard Law School. We train the next generation of environmental lawyers, produce high-level faculty scholarship, transform that scholarship into concrete proposals, and provide expert legal analysis for policymakers in the vanguard of environmental and energy progress. With our outsized convening power, we also bring together influential decision makers from the public, private, and non-profit sectors for targeted discussions and focused problem solving.

Our program includes three distinct yet interdependent components. The Academic component focuses on doctrinal learning and scholarship. The Clinical component emphasizes client-based, real-world advocacy by students, overseen by experienced supervising attorneys, across a broad range of environmental and energy issues. The Policy component builds long-term relationships with key stakeholders, and develops policy-relevant expertise in targeted areas. These components enhance each other and leverage each other's strengths. A Clinic project may develop into a longer-term policy initiative that expands to include a broad set of stakeholders. Likewise, our policy work with stakeholders can generate specific ideas and clients for Clinic projects.

We have recently taken steps to integrate our Academic and Policy components, to more effectively distill and disseminate faculty research to policymakers.

## Outstanding Academic Offerings

The foundation of the Environmental Law Program is academic excellence. The Program's two leading environmental law faculty, Jody Freeman and Richard Lazarus, are renowned for their expertise in administrative law, environmental law, energy law, climate change regulation, and Supreme Court advocacy.

In addition to their teaching and scholarship, both professors are deeply engaged in the world of law and policy. Professor Freeman served in the White House in the Obama administration, is an independent director of ConocoPhillips, and consults broadly with stakeholders and state and federal policy makers on energy and environmental law and policy. Professor Lazarus served as the Executive Director of President Obama's Commission investigating the Deepwater Horizon Oil spill, chairs the Litigation Committee on the Board of the Environmental Defense Fund, and advises clients and argues cases before the Supreme Court. In 2017, he successfully defended a takings challenge to Wisconsin land use regulations in the Supreme Court case, *Murr v Wisconsin*.

These professors, alongside clinical faculty, visiting professors, fellows, and lecturers, offer students rich and varied learning opportunities.

## **Courses**

In the past academic year, Professor Lazarus taught Environmental Law and Torts. Professor Freeman taught Energy and Climate Law and Policy, Administrative Law, and Legislation and Regulation. Emmett Environmental Law and Policy Clinic Director Wendy Jacobs designed and launched a new Climate Solutions Living Lab, attracting students and faculty from six graduate schools to explore, develop, and promote carbon offset opportunities for Harvard University and other entities to voluntarily reduce their carbon footprint. Professor Jacobs also taught the Environmental Law and Policy Clinical Courses with Clinic Deputy Director Shaun Goho and Clinical Instructor Aladdine Joroff. Electricity Law Fellow Ari Peskoe led the reading group “Powering the U.S. Electric Grid.” ELP Executive Director Kate Konschnik taught the seminar “Contemporary Issues in Oil and Gas Law: Fracking, Takings, Pipelines, and Regulation.” Konschnik also gave two guest lectures at the Harvard School of Public Health. Goho taught a course on “Current Issues in U.S. Environmental Law” at Harvard College.

In addition to the ELP’s core course offerings, our affiliated faculty and fellows taught a variety of related courses. We hosted three visiting professors this past academic year: Jonathan Lovvorn taught Wildlife Law, James Salzman taught Natural Resources Law, and Robert Anderson taught American Indian Law. Meanwhile, the Reginald F. Lewis Fellow for Law Teaching, Duane Rudolph, led the reading group “Does Water Belong to the Public?” Harvard University Center for African Studies Postdoctoral Fellow Mekonnen Firew Ayano led the reading group “Law and Development in Contemporary Africa: Property and Land-use Regulation, Myths, and Realities.”

Each summer, Professor Lazarus joins Chief Justice John Roberts to teach a course abroad. In the summer of 2017, they went to New Zealand to teach a four-day course at Victoria University’s Law School. Lazarus also made an historic trip to Iran in March 2017 to give environmental law lectures at the University of Tehran.

## ***Independent Study***

In addition to coursework, students have the opportunity to deeply research topics that interest them. Below are some examples of independent work overseen by the ELP.

- Sara Dewey, JD ‘17, investigated the possibility of a new ordinance for Medford, MA to enhance protections for wetlands.
- Nilsun Gursoy, LLM ‘17, studied climate change litigation around the world.
- Yoonie Han, JD ‘18, wrote a paper about the democratization of energy.
- Eriko Ichikawa, LLM ‘17, researched renewable energy policy in Japan.
- Ross Peterson, JD ‘17, worked in Massachusetts State Senator Eric Lessor’s office and wrote a public policy paper reflecting his legislative work.

- Eleni Serifi, LLM '17, compared different regulatory frameworks for Greece to consider for its emerging oil and gas sector.
- Caleb Volz, JD '18 and Ryan Deroo, JD '18: traveled to Colombia over Winter Term 2017 and wrote papers on socially responsible business practices in Latin America.

## **The Emmett Environmental Law and Policy Clinic**

### **Overview**

The Clinic operates every semester and offers approximately 50 law students a year the opportunity to work on multi-disciplinary, real-time, legal and policy projects covering a broad spectrum of environmental and energy issues. Students and lawyers in the Clinic litigate and write briefs in judicial and administrative settings at the trial and appellate levels (including the U.S. Supreme Court and the Massachusetts Supreme Judicial Court), participate in appeals, comment on proposed federal and state rules, draft model statutes and ordinances, work with a variety of clients to develop strategies for improving environmental protection and advocating for environmental and energy justice, and prepare white papers advocating for legal reform.

Because today's legal challenges require interdisciplinary solutions, the Clinic reserves slots for students from other schools at Harvard. As a result, students from the Kennedy School, the Business School, the School of Public Health, the Engineering School, and even MIT and Tufts have participated in the Clinic. The Clinic attracts students from all over the world, enabling it to work effectively on projects requiring international expertise and fluency in other languages. Recently, the Clinic has worked on projects involving Japan, China, Chile, and the European Union and has hosted students from Australia, France, Ghana, India, Japan, Liberia, New Zealand, Romania, Turkey, and the UK.

Clinical Professor and Director Wendy Jacobs designs and seeks out projects that meet two key goals: each project must serve the Clinic's mission to teach students how to be creative, confident, and skilled lawyers, and each project must address a significant and thorny environmental, energy, or land use problem. For all projects, Professor Jacobs ensures that clinic students interact with and make presentations to clients, regulators, policymakers, and other decision makers (including judges) and also produce significant written work. For students to be positioned to take the lead in such interactions, Professor Jacobs, Deputy Director Shaun Goho, and Clinical Instructor Aladdine Joroff devote significant time working with each student to help them conduct top-notch research, write high quality legal analyses, and make sophisticated oral presentations and arguments.

### ***Examples of Recent Clinical Projects***

The majority of the Clinic's work is on behalf of clients, including municipalities, state and federal agencies, national and local nongovernmental organizations, and citizen groups. Students work directly with Clinic clients under the close supervision of Clinic staff. These interactions provide students an opportunity to navigate the nuances of attorney-client relationships, receive feedback, and reflect on their experiences.

While the Clinic's strategic litigation and client advice work is confidential, the following are examples of recent non-confidential projects.

#### **Citizen Science**

Clinic staff and students developed an interactive, electronic "Manual for Citizen Scientists Starting or Participating in Data Collection and Environmental Monitoring Projects." This interactive tool helps individuals and organizations identify, design, and implement citizen science projects. The Manual is supported by a fifty-state survey of trespass and other laws relevant to the activities of citizen scientists and includes regulatory and evidentiary standards applicable to uses of environmental data. The Clinic will co-host a citizen science conference in the Fall of 2017 with the Environmental Law Institute and Environmental Defense Fund. Clinic students will also present the manual and provide targeted guidance at forums such as the Great Lakes Restoration Annual Conference in New York.

#### **Amicus Brief in Exxon Mobil Case**

In June 2017, the Clinic filed an amicus brief in the Massachusetts Court of Appeals on behalf of five former Massachusetts attorneys general in a case involving a claim by Exxon Mobil that the current attorney general, Maura Healey, should not be allowed to use a civil investigative demand (a key investigatory tool) to compel Exxon to release information regarding its climate change-related disclosures and claims. In light of the significance of the case, the Supreme Judicial Court, on its own initiative, has taken the case from the Court of Appeals for immediate consideration and resolution.

#### **Farm Bill Recommendations**

The Clinic has been collaborating with the Harvard Food Law and Policy Clinic and a consortium of clinics and research programs at other law schools to analyze the Farm Bill and develop policy recommendations for reforms in advance of the legislative debate over the next Farm Bill. A team of clinic students researched and wrote a white paper on "Opportunities to Address Climate Change in the 2018 Farm Bill," which will be released in August 2017. The consortium's full set of recommendations will be announced at an event in Washington, D.C., in September 2017.

## Modernizing the Energy Sector

The Clinic continued its work related to the modernization of electricity systems, focusing on the integration of environmental goals and consideration of energy justice. Students have presented and testified to city staff, state agencies, and advocacy groups regarding the legal and policy support for microgrids, virtual power plants, energy justice, and operation of state renewable energy programs in federally regulated energy markets.

## Assistance to Municipalities

Over many semesters, the Clinic has assisted municipalities with the drafting of ordinances, by-laws, and guidance documents. During the Fall of 2016, a Clinic student helped the City of Boston revise and update its noise ordinance; during the Winter semester 2017, another student helped New York City draft its climate change adaptation guidance. Also during 2016-2017, the Clinic identified and analyzed strategies for municipalities to promote building operations with net zero emissions of greenhouse gases. Students on this project presented their work to municipal officials and at conferences; the Clinic is finalizing a white paper to be released this fall.

## MATS Rule Amicus Brief

In January 2017, the Clinic filed an amicus brief in the U.S. Court of Appeals for the D.C. Circuit on behalf of nine scientists to defend EPA's supplemental cost consideration for the Mercury and Air Toxics Rule.

## Adaptation to Climate Change Impacts

Building on its extensive prior climate change adaptation work for Boston and other Massachusetts cities, the Clinic focused on issues and opportunities of importance to smaller inland communities. Students identified legal authority and opportunities that rural municipalities can pursue to enhance climate change preparedness. In Spring 2017, students presented their wetlands-related recommendations at the 2017 Massachusetts Association of Conservation Commissions' Annual Conference, fielded questions from expert practitioners, and won an award for their presentation.

## Clean Water Rule Amicus Briefs

In Winter 2017, under the supervision of Clinic staff, Clinic students assisted the National Environmental Law Center with fact-gathering, research, drafting, and filing of two amicus briefs (on behalf of municipalities and small businesses) in the Sixth Circuit litigation on EPA's Clean Water Rule.

### ***Off-Campus Placements***

To maximize students' opportunities for networking and exposure to a variety of lawyering styles and subject matters, the Clinic has also established a variety of off-campus clinical placements, such as with the U.S. Department of Justice, the Massachusetts Attorney General's Environmental Crimes Strike Force as well as with some of the Clinic's clients/partners including City environmental and energy agencies in Boston and New York, the Environmental Defense Fund, the Clean Air Task Force, Alternatives for Community and the Environment, and Natural Resources Defense Council.

### ***Clinic Publications***

The Clinic regularly publishes white papers and other reports on its work. Examples of forthcoming papers include:

- *Detecting Lead in Household Tap Water: Sampling Procedures for Water Utilities* (forthcoming August 2017)
- *Lead in Drinking Water: Potential Litigation Theories for Affected Individuals and Communities* (forthcoming, August 2017)
- *Opportunities to Address Climate Change in the 2018 Farm Bill* (forthcoming August 2017)
- *Manual for Citizen Scientists Starting or Participating in Data Collection and Environmental Monitoring Projects* (final forthcoming September 2017; draft available now)

### ***Clinic Events***

The Clinic regularly organizes and hosts events on topical and significant environmental issues. For example, in October, 2016, the Clinic, together with Harvard's International Human Rights Clinic and the Immigration and Refugee Clinic, co-hosted a major conference entitled "Climate Change Displacement: Finding Solutions to an Emerging Crisis." The conference brought together community members, government officials, academics, and advocates to examine four case studies: Boston and other cities on the East Coast of the United States, Alaska Native villages, Central America, and Somalia. The keynote speaker was Mary Robinson, the former President of Ireland and United Nations High Commissioner for Refugees, and currently the U.N.'s Special Envoy for Climate Change. Professor Jacobs and Clinic Deputy Director Goho led two of the four working groups during this event.

The Clinic also regularly invites legal and scientific experts to meet with students and discuss a variety of topics, ranging from occupational health to climate change litigation to interpretations of the Federal Power Act.

## **Environmental Policy Initiative**

### ***Overview***

Since 2012, the Environmental Policy Initiative has worked to drive the legal reforms necessary to meet new environmental challenges, and respond to shifts in technology and emerging market trends. The policy team focuses on four topics: climate mitigation; electricity law; unconventional oil and gas; and water quality. EPI provides expert policy analysis to decision-makers and creates opportunities for students to engage on cutting-edge environmental topics.

### ***Program Areas***

#### **Climate Mitigation**

EPI has been a leading voice on EPA's Clean Power Plan for several years, providing legal analysis to policymakers and state regulators. While the Trump EPA has announced it will rescind the Clean Power Plan, much of the expertise generated by EPI through its Clean Power Plan efforts remains relevant, as states step up their efforts to address climate change. For example, EPI is engaged in discussions about expanding the greenhouse gas trading program in the northeast (known as the Regional Greenhouse Gas Initiative) to non-member states such as Virginia, New Jersey, and Pennsylvania. In addition, over the past year, EPI staff has sat on the Steering Advisory Committee of the National Energy Efficiency Registry, or NEER. A multi-state effort led by Tennessee to facilitate energy efficiency trades for the Clean Power Plan, NEER is now being established as a stand-alone trading platform. Similarly, EPI has consulted with states looking to create their own greenhouse gas trading programs, in the absence of a federal regime.

#### **Electricity Law**

Since 2012, EPI has tracked the growing number of constitutional challenges to state clean energy policies, mounted by fossil fuel-dominated states, oil and coal companies, out-of-state renewable energy companies seeking to tap additional markets, and ideological groups opposed to action on climate change. EPI created a website, [StatePowerProject.org](http://StatePowerProject.org), to share its work with states, other litigants, and the general public. EPI attorneys regularly publish articles summarizing the evolving law in this area, and recommending how states can lower their litigation risk while pursuing clean energy policies. StatePowerProject sends case alerts to a mailing list of over 600, and has become a go-to resource for academics, practitioners, and journalists covering state clean energy policy (13,687 hits in 2016; 13,000 hits so far in 2017). Upon request, EPI reviews proposed state legislation, rules, and ballot initiatives for possible constitutional concerns. EPI's Senior Fellow in Electricity Law, Ari Peskoe, is the key attorney behind this effort.



Building on the success of StatePowerProject.org, in 2015, EPI launched Power Shift in partnership with Duke University's Nicholas Institute. Power Shift is a network of energy law professors and electricity law practitioners, which meets two or three times a year to discuss hot topics in energy law, enabling a rich dialogue between academics and attorneys who otherwise rarely interact. This network exposes academics to topics urgently in need of academic research, while providing regulators and advocates a chance to step back from their day-to-day demands and consider broader perspectives on the legal and regulatory questions they face.

EPI and the Nicholas Institute have convened workshops alongside large trade association meetings held by the National Association of Regulatory Utility Commissioners (NARUC) in Washington, D.C. (February 2017), and Nashville, TN (July 2016). Also in 2016, Power Shift curated a special online issue of the Harvard Environmental Law Review after the Supreme Court's blockbuster decision upholding FERC's authority to ensure price parity for "demand response" (commitments not to consume energy during peak demand) in wholesale electricity markets. The special issue featured essays on the implications of the decision for energy efficiency, demand response, and distributed generation. Power Shift will meet again in December in Minnesota for a Midwest-focused workshop. Another workshop is being planned with the University of Nevada at Reno for the Spring of 2018.

Led by Peskoe's research, EPI has also been deeply engaged in conversations about FERC's authority to set a carbon price for wholesale electricity markets, and the legal obstacles to integrating distributed energy resources into the electricity grids.

### Unconventional Oil and Gas

Since 2012, EPI research has helped to address the risks posed by unconventional oil and gas development, and to identify how to improve state and federal law to adequately protect public health and the environment.

In 2016, EPI began writing a series of papers on spills from oil and gas drilling, working with a group of experts convened by The Nature Conservancy and UC-Santa Barbara. In 2017, two of these papers were published, documenting thousands of spills from unconventional oil and gas wells since 2005 and identifying risk patterns and distances from surface water. One of the papers focused on the varied quality of the spill data collected by different states, an analysis that can help to direct inspection and enforcement resources where they are most needed. In 2017, EPI has shared its findings with the Groundwater Protection Council, states, and the American Petroleum Institute. API subsequently expressed interest in helping its members improve spill reporting. EPI is also working with one state to improve spill reporting mechanisms, a project that could be a model for other states.

EPI also regularly participates in key stakeholder meetings to improve the governance of shale development. In 2016, Konschnik was invited to join a small group of regulators, industry representatives, environmental NGOs, and academics at the Aspen Institute to discuss possible reforms. The group has met four times; Konschnik and several other participants are drafting case studies of governance successes and failures from around the country, which can serve as “best practice” guides for future development. The group is now preparing to apply its lessons to a new unconventional field in west Texas. In 2017, Konschnik published a paper proposing a state compensation fund for induced seismicity caused by oil and gas activity. Konschnik recently traveled to Oklahoma to discuss the proposal with interested stakeholders.

### Clean Water and Climate Resilience Strategies

In 2016, EPI Fellow Jamie Konopacky began researching innovative water quality partnerships between farms and cities in her home state of Wisconsin. Rather than pay for expensive upgrades at wastewater treatment facilities, cities were willing to pay farmers to reduce their nutrient runoff into the common water body, achieving the same water quality at far lower cost. Konopacky delved into the research, met with many stakeholders, and ultimately published the results in a 2017 law review article. From this work, Konopacky began thinking about how small-scale watershed planning and in-stream monitoring might vastly improve the largely voluntary water quality improvement programs for agriculture in the United States.

After spending weeks interviewing stakeholders in Wisconsin, Iowa, and Kansas -- states identified for their strong agricultural identity and their leadership on the Senate Agriculture Committee -- Konopacky discovered considerable interest in adopting more effective water quality programs. To enable Konopacky to share these findings with Senate offices writing the 2018 Farm Bill, EPI hosted a Senate briefing on small-scale watershed planning and its implications for Farm Bill conservation funding, and conducted companion webinars for environmental advocates and farming trade associations.

### ***Student Involvement***

The following students were involved with EPI this year:

- Cayla Calderwood, JD '18 was a research assistant in the Spring of 2017. She researched lawsuits that challenge the characterization of agricultural facilities as “non-point sources,” excluding them from permitting requirements under the Clean Water Act. Cayla is interning at FERC this summer and writing a paper about pipeline permitting, with Konschnik as her advisor.
- Cade Carmichael, JD '17 was a research assistant in the Fall of 2016 and the Spring of 2017. He researched issues related to the importation of forest pests on woody plants and wood

products. He and Konschnik offered policy support to researchers at the Harvard Forests who wanted to enhance the law to make it more difficult for pests to be imported.

- Charlie Corbett, JD '19 was a research assistant in the Fall of 2016 and Spring of 2017. He researched issues related to BLM's methane rule for oil and gas production on public lands, the Federal Records Act, and President Trump's environmental nominees.
- Erik Federman, JD '18, was a research assistant in the Spring of 2017. He looked at transparency issues related to court settlements and arbitration agreements over environmental and health claims against oil and gas companies.
- Ryan Rossner, JD '19, was a research assistant in the Spring of 2017. He developed Policymaker Summary from an academic paper by a professor, and helped EPI track litigation against NY's Zero Emission Credits for existing nuclear power.
- Keith Thomas, JD '18, was a research assistant in the Fall of 2016 and part of Spring 2017. He worked with Konschnik to research Community Choice Aggregation laws in five states, comparing the process required of cities in each state to make bulk power purchases on behalf of their citizens. He worked with Peskoe reviewing the use of Alternative Dispute Resolution techniques in state Public Utility Commissions.
- Juliane Steffens, an LLM student from Germany, was a research assistant in the summer of 2016. She investigated constitutional issues raised by state clean energy policies.
- Archana Dayalu received her PhD from the Harvard School of Engineering and Applied Sciences in 2017. Archana was Konschnik's research assistant in FY 16, and they co-authored a peer-reviewed paper about public disclosure of hydraulic fracturing chemicals. Archana's supervisors asked her to include this paper in her dissertation.
- Tiffany Lemon and Isabelle Feldhaus are PhD students at the Harvard School of Public Health. Konschnik mentored them through the Harvard Women in Science Education (HWISE) mentorship program.

### **Clinical and Policy Initiative Collaboration**

In 2013, EPI and the Clinic launched a project to encourage more environmental flood control and runoff prevention strategies in New England. They supervised a team of students who reviewed five town codes to identify unintended barriers to "green infrastructure" and suggest ways to build low-impact development into town planning. EPI then worked with Newport, Rhode Island to conduct a similar review, which led to helping Newport update its Comprehensive Plan to address sea level rise and water quality concerns. In 2017, EPI also participated as an independent policy consultant to Rhode Island and the City of Providence as they negotiated a consent decree to address water quality issues.

Konschnik and Goho are investigating underground natural gas storage policy in the wake of the historic release of methane from the Aliso Canyon facility in suburban Los Angeles, and published

the first in a series of papers examining how leaks can be better identified, reported, and prevented. “A National Assessment of Underground Natural Gas Storage: Identifying Wells with Designs Likely Vulnerable to a Single-Point-of-Failure,” was published in *Environmental Research Letters* in May, 2017 and was chosen as an “Editor’s Featured Article.” Konschnik and Goho co-supervised Clinical student Josh Morrow, JD ‘17, as part of this research effort.

### **Academic and Policy Initiative Collaboration**

With the election of President Trump, who has announced his intent to significantly remake environmental and energy law, we decided to more closely integrate the Academic and Policy Components of our program. This will help us to more quickly and effectively disseminate legal research and policy proposals into the domains where policy is made. Our Program’s mission is not research in the abstract, but research in action. Going forward, the non-clinical focus of our Program will focus on:

- (1) convening key stakeholders to work on specific challenges in energy and environmental law;
- (2) producing the highest quality legal research and scholarship;
- (3) converting that work into actionable policy proposals, for uptake by leaders and policymakers; and
- (4) strengthening relationships with state and private sector stakeholders who ask for legal and strategic advice on legislative and regulatory proposals.

**Summit I (December 2, 2016)** – Within a week of the 2016 elections, Professors Freeman and Lazarus were planning a response. Almost immediately, Professor Freeman posted an analysis of the implications of the election for energy and environmental law, including what the new president could do with the stroke of a pen, and what he could not. Before the administration’s plans were known, Freeman and Lazarus convened a select group of top legal, policy, political strategy, and academic minds at Harvard Law School, to conduct a threat assessment of environmental rules and policies that might be weakened or rescinded, and identify how the Obama Administration could secure protections in their final days in office. Attendees at the December event included political appointees from the Clinton and Obama Administrations, former senior Hill staff, environmental advocates, states, and law professors from leading universities—a unique combination of expertise that is rarely brought together. This event helped to galvanize participants and set priorities for action.

**Environmental Law Bootcamp (January 26, 2017)** – One of the ideas from the December Summit was to conduct a non-partisan educational session on Capitol Hill, for both Democratic and Republican staffers, covering the basics of the nation’s environmental and natural resource laws, and the Administrative Procedure Act. Acting quickly on this idea, Freeman and Lazarus, in partnership with Konschnik (who had worked as a Senator’s Chief Environmental Counsel),

created an Environmental Boot Camp for Senate staffers to be held at the beginning of the 115th Congress. We invited seven of the nation's most eminent environmental law and administrative law faculty, representing the University of Washington, the University of Colorado, Vanderbilt University, the University of Virginia, and Harvard Law School (Freeman, Lazarus, and Professor Matthew Stephenson), and created a substantive half-day syllabus. We also invited researchers from the non-partisan Congressional Review Service, to present the mechanics of the Congressional Review Act, a statute with which staffers had little experience. While our intent was for the boot camp to be non-partisan, Republican offices expressed concern that attendance might invite retribution from Party leaders. To accommodate this problem, faculty met individually with interested Republican offices, and separately conducted the Boot Camp. There, for four hours the faculty held the attention of nearly 100 Senate staffers, covering pollution law, natural resources law, Indian law, and administrative law. The event was a huge success, and spawned requests for additional educational sessions on a variety of energy and environmental topics. Currently, we are working with counsel on the Senate Energy and Natural Resources Committee to produce a more focused non-partisan workshop on mining issues for the Fall of 2017. We hope to run similar boot camps on the same model at the start of every new Congress.

**State Attorneys General Convening (April 23-24, 2017)** – Knowing that Freeman and Lazarus were looking to help defend against a significant weakening of both traditional federal environmental protections and more recent climate and energy policies, state Attorneys General offices asked if they would consider hosting a meeting for state environmental attorneys, to help build connections and facilitate information exchange. We agreed, and hosted a dinner and a full-day workshop for attorneys representing 15 state Attorneys General offices. Freeman, Lazarus, and Konschnik each gave presentations on topics ranging from cooperative federalism to the Dormant Commerce Clause; then, we left the room so the state attorneys could speak confidentially about legal strategy. The participants were enthusiastic about the event, and several have asked for follow-up sessions. For example, the group requested training on FERC policies relevant to climate change, which may present opportunities for action. Responding to this request, EPI attorneys organized and conducted a webinar on June 13. EPI is in the process of publishing a white paper on the same topic for wider distribution.

**Summit II (June 22, 2017)** – Freeman, Lazarus, and Konschnik then hosted a second Summit, with many of the same attendees from December, supplemented by additional experts on topics that had gained in importance over the prior months (e.g., the federal budget process). We spent this day comparing our initial threat assessment to the Trump Administration's decisions during its first five months. The group discussed and prioritized action items, identified topics in need of academic research, and noted issues to monitor.

Going forward, we will continue to convene similar events as opportunities arise. In addition, the Environmental Law Program will increasingly convert our expert legal analysis into digestible summaries for dissemination to federal and state policymakers and litigants defending environmental protection, clean energy, and good government. We will focus on initiatives where our unique expertise and organizational strengths add the most value without being duplicative. We will also continue to seek partnerships and opportunities for collaboration with other academic leaders in this work, as well as allies in the NGO, industry, and government sectors.

### ***Tom Barron Fellows***

The ELP offered Barron Fellowships to nine students this summer to work in the public interest environmental law field. Qualifying work includes positions at government entities, NGOs, or other public interest organizations working on issues such as climate change, energy regulation, land acquisition and management, pollution control, carbon policy, environmental justice, water quality, or biodiversity conservation. Barron Fellows are among our strongest and most dedicated students; they have demonstrated a commitment to environmental, natural resource and energy law throughout their law school careers. We expect many of them to continue to work in these fields, in government or private sector positions, post-graduation. The 2017 Barron fellows are:

#### Class of 2018

- Erik Federman
- Joshua Kestin
- Claire Horan
- Bess Carter

#### Class of 2019

- Amy Chyao
- Evan Hindman
- Jakob Jozwiak
- Michelle Melton
- Ryan Rossner

### ***Beagle Fellows***

Each year, the Beagle/HLS Fellowship at the Natural Resources Defense Council (NRDC) provides one graduating HLS student, or a recent alumnus, a two-year funded litigation position at NRDC. This prestigious fellowship, which has been awarded to our very top graduating students, was established by a generous gift to Harvard Law School by the Beagle Foundation, established by the late Joy Covey '89. The Fellowship is intended to launch a young lawyer into a position at the

NRDC; provide training and supervision for the Fellow; enhance the Fellow's lawyering and litigation skills; and promote the Fellow's interest in pursuing a career in nonprofit litigation and environmental law. The 2017 Beagle Fellows are Sara Fort and Cecilia Segal.

### ***Events with Harvard Environmental Law Review and Environmental Law Society***

Power Shift, the network of electricity sector regulators and stakeholders that ELP established in partnership with Duke University, curated a special online issue of the Harvard Environmental Law Review after the Supreme Court's blockbuster decision upholding FERC's authority to ensure price parity for "demand response" (commitments not to consume energy during peak demand) in wholesale electricity markets.

On November 16, 2016, ELP, the Environmental Law Society, and the American Constitution Society presented the ELP Horizon Award to then EPA Administrator Gina McCarthy. ELP presents the award each year to someone who has made groundbreaking achievements in environmental law and policy.

### ***Advising Student Writing***

ELP faculty advised several J.D. and LL.M. student papers, several of which won awards.

### ***Reception Honoring Graduating Environmental Law Students***

On April 25, the environmental law faculty hosted its annual reception in celebration of the graduating J.D., LL.M., and S.J.D. students who were significant members of the environmental law community during their time at Harvard Law School.

### ***Environmental Law Program Speaking Engagements and Presentations***

#### ***Jody Freeman***

- "Has EPA Gone Overboard?," IQ2 Debate arguing against the proposition, Washington D.C., Sept. 7, 2016.
- Interview with Monica Trauzzi, post-CPP Oral Argument, Sept. 27, 2016.
- "U.S.-China Cooperation on Climate: A Bright Spot in the Bilateral Relationship," Presentation at U.S., China and International Law conference, University of Pennsylvania, Philadelphia, PA, Oct. 7, 2016.
- "The Future of Administrative Law," U.S. Department of Justice Symposium, Washington, DC, Nov. 4, 2016.
- "The Future of the Clean Power Plan," Harvard Environmental Law Review Panel, Nov. 11, 2016 (with Lazarus, moderated by Konschnik).

- “Briefing for U.S. Congressional Staff,” Environmental Law Boot Camp, Jan. 25, 2017 (with Lazarus).
- “Environmental Law in the Trump Administration,” Harvard Environmental Law Program, Jan. 30, 2017 (with Lazarus).
- “From Obama to Trump: Implications for Climate and Energy,” Advanced Leadership Initiative Fellows Program: Climate Change Deep Dive. Harvard Business School, Mar. 2, 2017.
- “The Limits of Executive Power: The Obama-Trump Transition,” 2017 Roscoe Pound Lecture, University of Nebraska, Lincoln, NE, Mar. 10, 2017.
- “From Obama to Trump: Implications for Climate and Energy,” HLX Open Lecture to 400 alumni, Apr. 25, 2017.

### *Richard Lazarus*

- “The Future of the Clean Power Plan,” Harvard Environmental Law Review Panel, Nov. 11, 2016 (with Freeman, moderated by Konschnik).
- “Briefing for U.S. Congressional Staff,” Environmental Law Boot Camp, Jan. 25, 2017 (with Freeman).
- “Environmental Law in the Trump Administration,” Harvard Environmental Law Program, Jan. 30, 2017 (with Freeman).
- “U.S. Supreme Court October Terms 2015 & 2016: Review and Preview,” annual course on Environmental Law, American Law Institute/Environmental Law Institute, Washington, D.C., Feb. 9, 2017.
- “*Murr v. Wisconsin* – A Look Inside,” Oral Argument Preparation, Harvard Law School, Mar. 15, 2017.
- Oral Argument in Supreme Court, Counsel for Respondent St. Croix County, *Murr v. Wisconsin*, U.S. Supreme Court, Washington, D.C., Mar. 20, 2017.
- “*Murr v. Wisconsin* – Oral Argument Review,” Georgetown University Law Center Supreme Court Institute, Washington, DC, Mar. 20, 2017.
- “The Supreme Court: Who’s the Ninth and What’s on the Docket (plenary session),” American Bar Association, 46th Annual Meeting of Section on Environment, Energy, and Resources, Los Angeles, CA, Mar. 30, 2017.
- “The Environmental Law Curriculum at HLS: Choosing Course and Pathways,” Harvard Environmental Law Program, Apr. 11, 2017.
- “Environmental Law before the Supreme Court: October Term 2016,” Harvard Environmental Law Review/Harvard Civil Rights Civil Liberties Law Review Program, Apr. 13, 2017.



*Wendy Jacobs*

- “Displacement in Boston and other Cities on the East Coast of the U.S.”- a case study at the International Conference on Climate Change Displacement, HLS, Oct. 21-22, 2016.
- “Implementing Co-benefits,” panel discussion moderator at the Capturing the Carbon Dividend: The Health Benefits of Climate Mitigation Symposium, Harvard Global Health Institute, Dec. 13, 2016.
- “Legal Aspects of CCUS,” Gordon Research Conference on Carbon Capture, Utilization, and Storage, New London, New Hampshire, June 14, 2017.

*Kate Konschnik*

- “Water Matters,” presentation to Mayor Burke, Medford, MA, July 28, 2016.
- “Hydraulic Fracturing,” lectures at Harvard School of Public Health, Boston, MA, Aug. 11, 2016, and Nov. 16, 2016.
- “Legal Issues with a National Registry,” National Energy Efficiency Registry, Providence, RI, Sept. 15-16, 2016.
- “The Clean Water Act,” guest lecture at Tufts University, Medford, MA, September 20, 2016.
- “Illuminating the Energy Policy Agenda: Electricity Sector Issues Facing the Next Administration,” webinar, Oct. 13, 2016 (with Peskoe and Jonas Monast of Duke).
- “Emerging Environmental Issues Related to Shale Gas,” National Governors Association, Pittsburgh, PA, Oct. 18, 2016.
- “Shale Gas Governance,” Aspen Institute, Aspen, CO, Oct. 22, 2016, Feb. 25, 2017, and June 3, 2017.
- “The Future of the Clean Power Plan,” Harvard Environmental Law Review Panel, Nov. 11, 2016 (moderator).
- Interview on Business News Network, Canada, Feb. 28, 2017.
- “State Reporting of Oil and Gas Spills,” Groundwater Protection Council, Sarasota, FL, Apr. 4, 2017.
- “A New Era of Energy Law,” American Bar Association and Pace Environmental Law Review, White Plains, NY, Apr. 20, 2017.
- “Implications of the Trump Election on Climate and Methane Issues,” BP convening, Washington, D.C., May 4, 2017.
- “Constitutional Challenges to State Clean Energy Policies,” Environmental Defense Fund Litigation Committee, Washington, DC, May 9, 2017.
- “Spill Studies: Key Findings and Next Steps,” American Petroleum Institute, Washington, D.C., May 16, 2017.
- “Climate-Relevant FERC Dockets,” webinar, June 13, 2017 (with Peskoe).

- “The Fight of our Lives: Saving the Climate and Clean Energy Agenda,” Environmental Entrepreneurs (E2), Boston, MA, June 23, 2017.

### *Shaun Goho*

- “Displacement of Alaska Native Villages” - a case study at the International Conference on Climate Change Displacement, HLS, Oct. 21-22, 2016.
- “The War on Science: Reports from the Battlefield,” Harvard Climate Week Panel (moderator), Harvard Law School, April 24, 2017.

### *Aladdine Joroff*

- “Judicial Review of the Clean Power Plan,” Boston Bar Association CLE Program, Climate Change: The Threat, Responses and Raising Awareness, June, 2016.
- “Net Zero Energy Buildings: What are they and When are they Coming: Government Mandates, Legal Barriers, and Financial Incentives for an Idea Whose Time Has Come?” National CLE Conference, Breckenridge, CO, Jan. 2017.
- “Environmental Lawyering in the New Administration,” moderator for a panel at Harvard Law School Women’s Law Association and Environmental Law Society, Mar. 2017.

### *Ari Peskoe*

- “Proposed Power Plant Bailouts in Ohio,” National Association of Regulatory Utility Commissioners (NARUC): Summer Meeting, Nashville, TN, July 26, 2016.
- “Rates for Distributed Energy Resources,” National Association of State Energy Officials (NASEO): Annual Meeting, Providence, RI, Sept. 12, 2016.
- “Illuminating the Energy Policy Agenda: Electricity Sector Issues Facing the Next Administration,” webinar, Oct. 13, 2016 (with Konschnik and Jonast Monast of Duke).
- “Supreme Court decisions about FERC,” American Public Power Association: Annual Legal and Regulatory Conference, Long Beach, CA, Oct. 18, 2016.
- “Zero Emission Credits,” UBS Conference Call, Nov. 9, 2016.
- “Integrating Markets and Public Policies,” MJ Bradley Clean Energy Group, Washington, D.C., Nov. 17, 2016.
- “Connecticut Renewable Energy Programs, 2nd Circuit Case,” NARUC: Electricity Committee, Dec. 8, 2016.
- “Public Utility Regulatory Policy Act,” NARUC: Winter Meeting, Washington, D.C., Feb. 13, 2017.
- “Zero Emission Credits,” National Governors Association Workshop on Future of Nuclear Power, Washington, D.C., Mar. 30, 2017.
- “Alternative Dispute Resolution at PUCs,” NECPUC Symposium, NH, June 5, 2017.

- “Zero Emission Credits,” Restructuring Roundtable, Boston, MA, June 16, 2017.
- “Climate-Relevant FERC Dockets,” webinar, June 13, 2017 (with Konschnik).
- “Integrating Markets and Public Policies, FERC.” Washington, D.C., June 21, 2017.

#### *Jamie Konopacky*

- “Small-Scale Watershed Planning Efforts,” Annual County Conservationists meeting, Wisconsin Rapids, WI, Dec. 1, 2016.
- “State-Level, Small-Scale Watershed Policy Options,” Dubuque Watershed Symposium, Dubuque, IA, Feb. 8, 2017.
- “Healthy Watersheds,” Lewis and Clark Food Law Symposium, Portland, OR, April 6, 2017.
- “Small-Scale Watershed Planning Efforts,” Farm Bill meeting of the Kansas Agricultural Alliance, June 20, 2017.

#### **Environmental Law Program Publications**

##### *Jody Freeman*

- *Implications of Trump’s Victory and the Republican Congress for Environmental, Climate and Energy Regulation: Not as Bad as it Seems?* Environmental Law Program (Nov. 10, 2016).
- *Don’t Roll Back the Vehicle Fuel Standards*, New York Times (Mar. 8, 2017).
- *The Future of Administrative Law*, 47 Environmental Law Reporter, 10186 (Mar. 20, 2017).
- *The Limits of Executive Power: The Obama–Trump Transition*, University of Nebraska Law Review (Forthcoming 2017).
- *The Uncomfortable Convergence of Energy and Environmental Law*, Harvard Environmental Law Review (Forthcoming 2017).

##### *Richard Lazarus*

- *Advocacy Matters: Transforming the Court by Transforming the Bar, Business and the Roberts Court*, Jonathan H. Adler, Ed., Oxford University Press (2016).
- *Garland’s Environmental Record Shows a Preference for Consensus*, 33 Environmental Law Forum 15 (July/Aug. 2016).
- *Who’s on First? District, Appeals Courts Grapple with Jurisdiction*, 33 Environmental Law Forum 13 (Sept./Oct. 2016).
- *Agencies Start Worrying Deference May No Longer Be Their Just Due*, 33 Environmental Law Forum 13 (Nov./Dec. 2016).
- *What Happens When a New White House Opposes Ongoing Litigation?* 34 Environmental Law Forum 13 (Jan./Feb. 2017).

- *A District Court Admonishes EPA. Will the White House Now Pile On?* 34 Environmental Law Forum 13 (Mar./Apr. 2017).
- *The Public Interest Bar Loses a True Giant in Citizen Jurisprudence*, 34 Environmental Law Forum 15 (May/June 2017).

#### Wendy Jacobs

- *Proposed Indicators to Measure the Environmental Responsibility of Oil and Gas Companies and Regulatory Reforms to Improve Access to Information about Offshore Drilling*, Washington Journal of Environmental Law & Policy (June 2015) (with Joroff).
- *Benefits of Regulating Hazardous Air Pollutants from Coal and Oil-Fired Utilities in the United States*, Environmental Science & Technology (Feb. 2016) (with Goho et al.).
- *Carbon Capture and Sequestration*, in “Legal Pathways to Deep Decarbonization in the United States,” Michael B. Gerrard & John Dernbach, eds., ELI Press (Forthcoming 2017).

#### Kate Konschnik

- *Illuminating the Energy Policy Agenda: Electricity Sector Issues Facing the Next Administration*. Duke University White Paper (Oct. 2016) (with Monast et al.).
- *Unconventional Oil and Gas spills: Materials, volumes, and risks to surface waters in four states of the US*, Science of the Total Environment (Jan. 2017) (with Maloney et al.).
- *Unconventional Oil and Gas Spills: Risks, Mitigation Priorities, and State Reporting Requirements*, Environmental Science & Technology (Feb. 2017) (with Patterson et al.).
- *A National Assessment of Underground Natural Gas Storage: Identifying Wells with Designs Likely Vulnerable to a Single-Point-of-Failure*, Environmental Research Letters (May 2017) (with Michanowicz et al.).
- *Regulating Stability: State Compensation Funds for Induced Seismicity*, Georgetown Environmental Law Review 29 (2017): 227-300.
- *Constitutional Issues to Consider in Clean Power Plan Compliance: Part 2, the Dormant Commerce Clause*, EPI White Paper, HLS (2016).

#### Shaun Goho

- *The Legal Implications of Report-Back in Household Exposure Studies*, Environmental Health Perspectives (Nov. 2016).
- *A National Assessment of Underground Natural Gas Storage: Identifying Wells with Designs Likely Vulnerable to a Single-Point-of-Failure*, Environmental Research Letters (May 2017) (with Michanowicz et al.).

*Aladdine Joroff*

- *Proposed Indicators to Measure the Environmental Responsibility of Oil and Gas Companies and Regulatory Reforms to Improve Access to Information about Offshore Drilling*, Washington Journal of Environmental Law & Policy (June 2015) (with Wendy Jacobs).

*Ari Peskoe*

- *Illuminating the Energy Policy Agenda: Electricity Sector Issues Facing the Next Administration*. Duke University White Paper (Oct. 2016) (with Monast et al.).
- *Comment on NARUC's Manual on Compensation for Distributed Energy Resources*, (Sept. 2016).
- *Easing Jurisdictional Tensions by Integrating Public Policy in Wholesale Electricity Markets*, Energy Law Journal (2017).
- *Comment to FERC on its Proposed Rule about DER Aggregation*, (Apr. 2017).
- *Report on the Use of Alternative Dispute Resolution (ADR) at Public Utility Commissions (PUCs)*, EPI White Paper, HLS (June 2017).

*Jamie Konopacky*

- *Battling the (Algae) Bloom: Watershed Policies and Plans in Wisconsin*, Boston College Environmental Affairs Law Review 44 (2017): 253-573.
- *The Healthy Watershed Framework: Revising Clean Water Act and Farm Bill Conservation Programming to Catalyze Small-Scale Watershed Planning and Implementation*, Lewis & Clark Environmental Law Review (Forthcoming 2017).