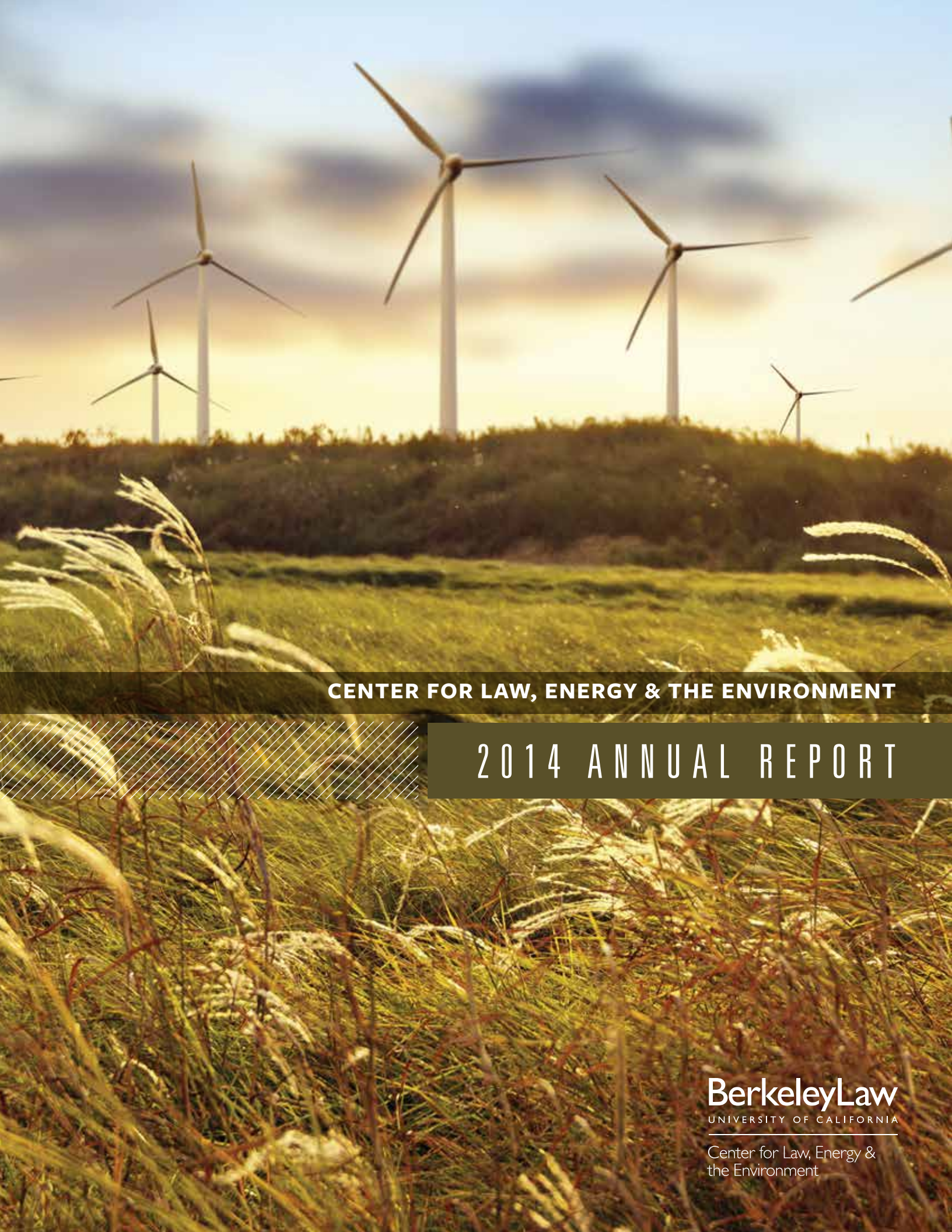


CENTER FOR LAW, ENERGY & THE ENVIRONMENT

2014 ANNUAL REPORT

BerkeleyLaw
UNIVERSITY OF CALIFORNIA

Center for Law, Energy & the Environment

“This is a proud and exciting time to be associated with CLEE. The Center has a remarkable staff and now a sterling ten-year track record completing work that has continuing, material real-world impacts on our society’s environmental policies.”

—**LENARD WEISS,** Chair, CLEE Advisory Board; Partner, Manatt, Phelps & Phillips

LOOKING FORWARD

Our central goal at the Center for Law, Energy, and the Environment—or CLEE, if you like—is to bring together the expertise, creativity, and passion of the Berkeley Law community to develop smart, practical public policy solutions to critical environmental and energy challenges. We work across the law school, across campus, and across institutional borders on inter-disciplinary research that helps us protect the environment that supports us and ensure access to energy for generations to come.

In 2014 we focused in on several key challenges concerning climate change mitigation, renewable energy acceleration, innovation in water management, and marine governance. Berkeley’s faculty, staff, and student research assistants produced in-depth analyses and convened working groups and conferences to further discussion in these and other areas of pressing need. At the same time, exceptional Berkeley Law students continued the school’s tradition of student-led initiatives and were digging into issues both inside and outside of the classroom, hosting events and providing inspiration to all through their talent and energy.

In 2015, CLEE will celebrate its first decade. It’s incredible to look back not just at the past year but at the past ten years at all our faculty, staff, students, and alumni have achieved—together we have completed dozens of research reports, hosted scores of events from guest speakers to full-scale symposia, published over 100 journal articles, book chapters, and other commentary, and supported Berkeley Law students as they obtained over 180 Environmental Law and Energy and Clean Technology Law certificates. None of this would have been possible without the support—the time, the gifts, the expertise and encouragement—of the incredible network of individuals that comprise the Berkeley environmental and energy community. In the coming year we look forward to welcoming a new energy law fellow, a new environmental law clinic director, and many others into that ever growing group.

An enormous thanks to our partners, collaborators, and supporters for making our first 10 years so meaningful and for helping us protect our water, our air, and our communities. We look forward to continuing down this path and seeing what we can accomplish together in the next 10.

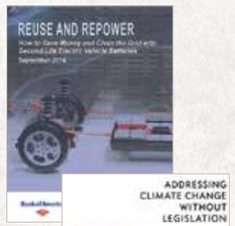
Jordan Diamond
Executive Director

Daniel Farber
Co-Faculty Director

Holly Doremus
Co-Faculty Director

CLIMATE AND ENERGY

CLEE works with policymakers, businesses, nonprofits, and others to advance clean energy and reduce greenhouse gas emissions.



Reuse and Repower **and** ***Addressing Climate Change Without Legislation*** **have received attention from the media and governement agencies.**

CLIMATE CHANGE AND BUSINESS RESEARCH INITIATIVE

CLEE's Climate Change and Business Research Initiative began in 2009 to facilitate communication, cooperation, and analysis with business executives, policymakers, non-profit leaders, and attorneys about the opportunities created by climate change. This successful collaboration between CLEE at Berkeley Law and The Emmett Institute at UCLA Law is sponsored by Bank of America. In the past year, the initiative produced a report, *Reuse and Repower: How to Save Money and Clean the Grid with Second-Life Electric Vehicle Batteries*, which was successfully launched at the Battery Show Conference outside of Detroit, Michigan in September. The report assesses how electric vehicle batteries can be reused to help decarbonize the energy sector and recommends support for more second-life battery demonstrations, regulatory reform for rules that inadvertently prevent investment in this potential market, clearer liability to determine who pays in the event of damages from second-life battery usage, and more data sharing on electric vehicle battery life both in the vehicle and in grid applications. *Reuse and Repower* generated significant media interest, and project leader Ethan Elkind contributed to op-eds, radio news, newspaper articles, and blog posts.

ADDRESSING CLIMATE CHANGE WITHOUT LEGISLATION

At the national level, the Center released three reports authored by Steve Weissman and Romany Webb in a series entitled *Addressing Climate Change Without Legislation*. Each volume looks at the existing authority of a particular federal entity to realize reductions in greenhouse gas emissions: the first report looks at the Department of the Interior, the second discusses the Federal Energy Regulatory Commission (FERC), and the third covers the U.S. Department of Agriculture. These reports have received attention on Capitol Hill and in the White House—including Congressman Henry Waxman placing the FERC report in the Congressional Record and encouraging each of the FERC commissioners to read it.

SUSTAINABLE LAND USE

In 2014, the Center continued its efforts to advance sustainable land use in two key areas: land use planning templates and rail system design.

PLANNING TEMPLATES

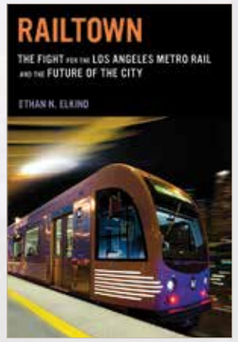
CLEE released two planning templates for the Governor's office that garnered the attention of policymakers. After completion, each report was launched via live webinar, where policymakers and stakeholders could engage with the authors to ask questions and highlight key conclusions. The reports, authored by Ethan Elkind and CLEE Fellow Christopher Williams, are:

Infill Planning Template for the Governor's Office of Planning and Research's California Environmental Quality Act Guidelines of 2014. This template reviews 20 infill-supportive policies with sample policy language, as well as recommendations on financing, CEQA exemptions, and other infill implementation measures.

Renewable Energy Planning Template for the Governor's Office of Planning and Research's California Environmental Quality Act Guidelines of 2014. This template highlights best policy practices for both small-scale rooftop (ancillary) and medium-scale (primary) solar projects. It includes sample General Plan policy language regarding 10 PV-supportive strategies, as well as guidance on financing mechanisms.

INVESTING IN PUBLIC RAIL TRANSIT

Ethan Elkind published a new book, *Railtown: The Fight for L.A.'s Metro Rail System and the Future of the City* (U.C. Press, 2014). The book addresses the history of the LA Metro Rail System and shows how ambitious local leaders created support for their vision of rail in Los Angeles. The release of *Railtown* was especially timely as Los Angeles has embarked on a new, multi-billion dollar rail expansion program that has served as a model for public transit investment in cities around the country.



Ethan Elkind's ***Railtown*** **can be found at University of California Press at www.ucpress.edu.**

CALIFORNIA WATER

The Wheeler Institute for Water Law and Policy was established at CLEE in 2012 and has been building its work at the crossroads of science, policy and the law. The Institute has developed three major and mutually supporting initiatives: addressing emerging threats to water quality, reconciling conflicts between human and environmental water use, and developing resilient urban water systems.

"[It was] such a wonderful program, with complete coverage of virtually every aspect of the trust . . ."

—**JUSTICE RONALD B. ROBIE**, Court of Appeal, Third Appellate District

David Cobb, Hap Dunning, Marc Del Piero, and Michael Hanemann in discussion at the *Mono Lake at 20 Symposium* (above, right).

SYMPOSIUM

The Institute organized a symposium at the State Water Resources Control Board (State Board) in Sacramento on November 17, 2014, to mark the 20th anniversary of the State Board's landmark decision on Mono Lake (D-1631). The implications of the decision continue to unfold, both for Mono Lake and its tributaries, as well as for California water rights management more broadly. Recognizing the need for further engagement on still-unsettled ramifications of D-1631, the Symposium facilitated lively dialogue among thought leaders on incorporating public trust considerations into new and existing water rights.

RESEARCH

Our work on California's continuing drought is ongoing and multifaceted. CLEE faculty, staff, and students provided comments to the State Board suggesting a contingency-based framework for drought decision making. The CLEE comments also offered recommendations to develop the capacity of California's water rights system to respond more effectively to water shortage.

NEW INITIATIVE

The Institute was named the UC Berkeley lead for a major ($3.5 million) new initiative bringing together five UC campuses to tackle one of the state's most persistent challenges—the long-term sustainability of its most precious resource. The UC Water Security and Sustainability Research Initiative is a coordinated, multi-campus, interdisciplinary effort to address water security challenges. The Initiative's initial focus will include work on implementation of the Sustainable Groundwater Management Act and addressing key information gaps for California water resource management.

THE MARINE ENVIRONMENT

CLEE is proud to work with the Law of the Sea Institute (LOSI), which is directed by Professor Harry N. Scheiber, Chancellor's Emeritus Professor and Stefan A. Reisenfeld Professor of Law and History (Emeritus). LOSI has been a resource and research center for studies of ocean law since 1965 and has been headquartered at Berkeley since 2002.

Conference participants in Madrid, Spain, September 19-20, 2014 (above).

SCHOLARSHIP

LOSI is a core resource for those studying ocean policy and the law of the sea, and hosts leading ocean law scholars and jurists as Visiting Scholars and Distinguished Fellows. In September 2014, LOSI welcomed William Gibbons-Fly, Director of the Office of Marine Conservation at the U.S. Department of State, as a Distinguished Senior Visiting Scholar for the 2014-2015 academic year. Current Distinguished Fellows include John Briscoe, Partner, Briscoe Ivester & Bazel LLP; David Caron, Dean, Dickson Poon School of Law, King's College, London; Carlos Espòsito, Professor, Faculty of Law, Universidad Autònoma de Madrid; James Kraska, Professor of Law, US Naval War College; Nilufer Oral, Deputy Director, Center for Marine Law Research, Istanbul Bilgi University; Jin-Hyun Paik, Judge, International Tribunal for the Law of the Sea (ITLOS), Professor, Seoul National University; and Tullio Treves, Professor, Faculty of Law, University of Milan, Judge Emeritus, ITLOS.

PUBLICATIONS

LOSI continues to publish books in its long-running partnership with Brill/Martinus Nijhoff Publisher. In 2014 this included:

- *Navigating Straits: Challenges for International Law*, eds. David Caron and Nilufer Oral
- *The Limits of Maritime Law*, eds. Clive Schofield, Seokwoo Lee, and Moon-Sang Kwon
- *The Oceans in the Nuclear Age: Legacies and Risks*, eds. David Caron and Harry Scheiber

ANNUAL CONFERENCE

In September 2014, LOSI partnered with the Korea Institute of Ocean Science and Technology and others to host an annual conference on law of the sea in Madrid, Spain. Featuring keynote addresses by Judge Jin-Hyun Paik and Judge Emeritus Tullio Treves of ITLOS and presentations by Jordan Diamond, David Caron, and other LOSI staff and scholars, *Ocean Law and Policy: Twenty Years of Development under the UNCLOS Regime* focused on discussion of the accomplishments and shortfalls seen in the developments in ocean governance under the UNCLOS regime. The proceedings will be published in a forthcoming volume.

STUDENT GROUPS

CLEE is proud to support and partner with the incredible students at Berkeley Law. Student groups, like those featured below, form the backbone of the Environmental Law and Energy Law programs at Berkeley.

Students welcoming runners to *ELQ's* 2014 Race Judicata (above, left). Students on *ELQ's* 2014 Tahoe trip (above, right). SEEJ students at West Oakland Environmental Indicators Project's (WOEIP) headquarters getting a tour of a low-cost aquaponic system in use there as a prototype (above, left; opposite page). SEEJ students on a "GrassRoutes" tour of the Port of Oakland, led last year by community organizers with the WOEIP (above, right; opposite page).

ECOLOGY LAW QUARTERLY

Since 1971, *Ecology Law Quarterly* (*ELQ*) has served as the hub of environmental scholarship at Berkeley Law. Publishing four issues a year, *ELQ* provides a forum for preeminent scholarship on groundbreaking environmental law topics, including renewable energy, environmental justice, and international environmental law. In 2008, *ELQ* launched *Ecology Law Currents*, an online companion journal designed to publish pieces on a more frequent basis than the print journal.

In 2014, in addition to publishing its four issues and *Currents*, the *ELQ* staff embarked on its annual outdoor adventures to Lake Tahoe and Yosemite; celebrated its new publications with the rest of the student body by hosting "Guac Fest," an afternoon filled with copious amounts of guacamole, music, and good times; and hosted an annual 5K, Race Judicata, a springtime fundraiser for public interest fellowships. *ELQ* also worked with CLEE to host "The Berkeley Exchange: Celebrating Berkeley's Contribution to Environmental Law Scholarship." The symposium highlighted Berkeley Law alumni scholarship, and this year *ELQ* will publish a symposium issue featuring three submitted pieces.

STUDENTS FOR ECONOMIC AND ENVIRONMENTAL JUSTICE

Founded by Berkeley Law students in 2009, Students for Economic and Environmental Justice (SEEJ) is a hub for environmental justice issues and advocacy at the law school. Committed to the equitable distribution of environmental and economic benefits and burdens, SEEJ investigates the strategic use of legal tools to strengthen grassroots organizing and build community power. SEEJ students are involved in a number of Student-Initiated Legal Services Projects, bring relevant practitioners and academics to speak at Berkeley, organize "GrassRoutes" tours of environmental hotspots to get students out into the community, and host annual symposia focused on environmental justice issues.

In 2014, SEEJ hosted its 10th annual Symposium, Taking Heat: National and International Environmental Justice Perspectives on Climate Change, which focused on the fairness dimensions of California's cap-and-trade program and the allocation of global climate change mitigation efforts among international actors. SEEJ also led a 2014 GrassRoutes tour of economic and environmental revitalization efforts ongoing in Oakland, in partnership with the West Oakland Environmental Indicators Project, a local environmental justice organization, and HOPE Collaborative, a coalition working to improve access to healthy, local food in West Oakland.

BOALT HALL ENVIRONMENTAL LAW SOCIETY

The Environmental Law Society (ELS) promotes public interest environmental law, engaging students through a variety of projects. ELS generates dialogue within the student community at Berkeley Law about emerging environmental issues and advocates for environmental protection.

ELS took on several projects in 2014, including multiple pro-bono projects with Earthjustice relating to the Clean Water Act, advocating for divestment of University of California funds from the top 200 fossil fuel companies, and partnering with the Boalt Sustainability Team to expand composting at the law school.

ELS engages with students and the community by hosting and co-sponsoring events and activities throughout the year. Some highlights from 2014 were co-hosting a presentation with the Native American Law Student Association on Recognizing the Rights of Nature, by Linda Sheehan of the Earth Law Center, hosting screenings of the documentary *DamNation* and NRDC's film *Wild Ones* followed by mediated discussions, and co-hosting a panel discussion on Diversity in Environmental Law with CLEE, Coalition for Diversity, and Law Students of African Descent.

Other organizations on campus:

- Berkeley Energy & Resources Collaborative (BERC)
- Student Animal Legal Defense Fund (SALDF)
- Boalt Sustainability Team
- Various Student Initiated Legal Projects (SLPS)

To support these groups directly, feel free to reach out to them. Their contact information is available at **www.law.berkeley.edu/clee**, in the "Students" section, or contact CLEE at **clee@law.berkeley.edu** and we can connect you.

CLEE TEAM

CLEE is proud to work with partners within and outside of the school. Our core team includes:

Daniel Farber, Faculty Director of Research and Public Policy Work and Sho Sato Professor of Law

Serving as the Co-Faculty Director of CLEE, Dan is a leading scholar in environmental law, constitutional law, and legislation. He is a pioneer in disaster law, an emerging field that examines legal issues and risk surrounding catastrophes and their aftermath. Much of his recent research centers on climate change.

Holly Doremus, James H. House and Hiram H. Hurd Professor of Environmental Regulation

Holly serves as the Co-Faculty Director of CLEE and is a leading scholar in environmental law, natural resources law, and law and science. Holly's strong background in life sciences inform her work and her commitment to inter-disciplinary teaching.

Jordan Diamond, Executive Director

Joining CLEE in November 2014, Jordan's work focuses on ensuring environmental and energy governance systems are based on robust information and inclusive, adaptive processes.

Michael Kiparsky, Associate Director of the Wheeler Institute for Water Law and Policy

Mike brings interdisciplinary perspective to bear on his work at CLEE. He has worked on technical and policy aspects of water resources management, and much of his work at CLEE lies at the intersection between the two.

Ethan Elkind, Associate Director of the Climate Change and Business Program

Ethan's work and interests cover the crossroads of climate change, business, and land use. His research produces practical solutions to combat climate change.

Nell Green Nylen, Research Fellow, Wheeler Institute for Water Law and Policy

Nell's research engages law, science, and policy to identify interdisciplinary solutions to pressing California water issues.

Hailey Anderson, Program Administrator & External Relations Specialist

Hailey keeps CLEE running smoothly, facilitating events and communications for CLEE staff, faculty, and students.

Hayley Oveson '16, Graduate Student Researcher, Fall 2014

Hayley worked with Mike Kiparsky and Nell Green Nylen to examine water rights and water allocation in drought. She was a contributing author to the Wheeler Institute's comments to the State Water Resources Control Board.

Rebecca Morse '16, Graduate Student Researcher, Fall 2014

Rebecca worked with Mike Kiparsky and Nell Green Nylen to examine legal and regulatory aspects related to citizen suits in the context of the Clean Water Act.

Shampa Panda '16, Student Liaison

Shampa works with CLEE's Administrative team to communicate events and opportunities to students, producing a weekly newsletter with a running list of environmental happenings at Boalt.

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Office of the Governor

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East Bay Community Law Center

Bill Chamberlain
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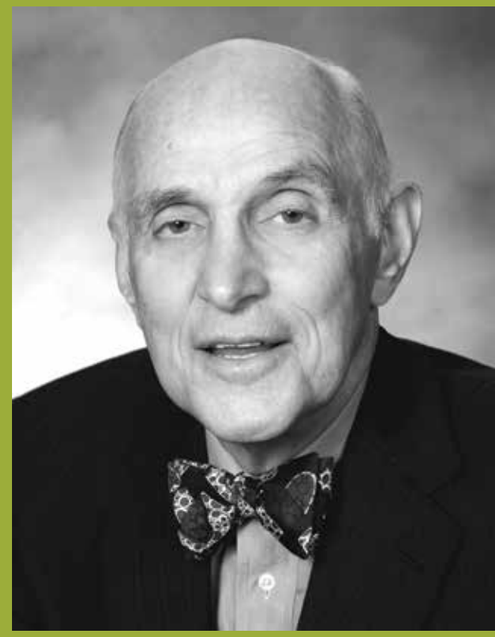
Mike Zischke
Cox, Castle & Nicholson LLP

IN MEMORIAM: JOSEPH L. SAX



This past year marked the passing of Joseph L. Sax, James H. House and Hiram H. Hurd Professor of Environmental Regulation (Emeritus). Joe was our hero, our teacher, our mentor, our colleague, our friend. We will miss his intellectual vigor and creativity, and the gentle way he approached even the most potentially divisive issues. We will do our best to carry on his work with the same commitment, integrity, and humility he brought to it.

Joe graduated from Harvard College and the University of Chicago Law School. He began his law teaching career at the University of Colorado in 1962, moved to the University of Michigan in 1966, and came to Berkeley in 1986. It would be impossible to overstate Joe's influence on environmental and natural resources law over the last half century. In the 1960s, he and a handful of others literally invented the field. Joe wrote a series of seminal articles and books, breaking new and important intellectual ground on topics as diverse as regulatory takings, the public trust doctrine, management of the national parks and other public lands, citizen enforcement of environmental law, western water law, and cultural property protection.

Joe's scholarship was never timid. He cared deeply about the issues he took on. He believed that the public had important interests in shared resources and even in some resources conventionally viewed as entirely private. He saw the courts as the institution often best situated to protect that public interest. He sought to persuade judges to take on that responsibility and to convince the political branches to assign the courts that role. He did not shirk from taking controversial positions on difficult issues. But Joe's scholarship was also never overbearing or overwrought. He was a scholar's scholar: he read voraciously and broadly, he thought synthetically, he reasoned carefully, and he always treated opposing arguments with respect.

As a teacher, Joe influenced countless students. Some went on to work in academia, others to government, and many to private law firms. Anyone who had the good fortune to experience one of his classes (as I did, many years ago), came away not only with a much deeper understanding of the subject matter but with a sense of the importance of approaching tough issues honestly and directly, and a great model for doing so.

Joe was never content to confine his work to the ivory tower. Throughout his career he engaged directly and effectively with the issues he cared about in judicial, legislative, and executive fora. We could go on and on about how he did so. In short, Joe was the consummate academic, a visionary and influential environmental advocate, and so much more. He will be sorely missed and dearly remembered. His influence will continue for many decades to come, through his writings and through the work of those he taught. At Berkeley Law, we will strive to live up to his legacy.

—**HOLLY DOREMUS**, March 10, 2014 (adapted from LegalPlanet)

"We will do our best to carry on [Joe's] work with the same commitment, integrity, and humility he brought to it."

THANK YOU FOR YOUR SUPPORT

A self-supported research unit within the school, CLEE could not complete its work without the generous financial and in-kind support we receive from the extended environmental and energy law community. Our gratitude to all of you who give of your time and resources to help make our projects and programs a reality. In a time of fiscal austerity throughout the state, and especially in the UCs, it is no exaggeration to say that none of this would be possible without you.

To find out more about how to support environmental and energy law, research, and students at Berkeley Law, please visit **www.law.berkeley.edu/clee-support**.

BerkeleyLaw
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Center for Law, Energy & the Environment

NEW LEAF PAPER® environmental benefits statement
of using post-consumer waste fiber vs. virgin fiber

UC Berkeley School of Law's CLEE Annual Report saved the following resources by using 250 pounds of Ingenuity, made with 100% recycled fiber and 100% post-consumer waste, processed chlorine free, designated Ancient Forest Friendly™ and manufactured with electricity that is offset with Green-e® certified renewable energy certificates.

TREES	**3 FULLY GROWN**
WATER	**1,402 GALLONS**
ENERGY	**1 MILLION BTUs**
SOLID WASTE	**94 LBS**
GREENHOUSE GASES	**259 LBS**

Calculations based on research by Environmental Defense Fund and other members of the Paper Task Force.

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