

21st Annual  
Tulane Environmental  
Law & Policy Summit



February 19-20, 2016  
Tulane University  
Weinmann Hall  
6329 Freret St.  
New Orleans, LA 70118  
[tulaneenvironmentallawsummit.com](http://tulaneenvironmentallawsummit.com)

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## 21st Annual Tulane Environmental Law & Policy Summit

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## 21st Annual Tulane Environmental Law & Policy Summit

Dear all,

Thank you for participating in the annual Tulane Environmental Law & Policy Summit! I chose the word “participating” because our summit is not a lecture series. Instead, the Summit utilizes a format in which, after the speakers present their ideas, the audience is invited to engage in the discussion. We hope that every attendee takes the opportunity to play a role in our panels.

Every year, our board develops a “theme” for the Summit. This task proved more difficult than we expected. After twenty years of Summit themes, every idea discussed felt recycled or stale. One of our faculty advisor, Professor Mark Davis, often instructed us to “plan a conference that you would want to attend.” The conference I wanted to attend would not cover topics from one specific theme, but would include issues that are relevant, engaging, and diverse. This meant abandoning the goal of creating a conference with a cohesive theme, and instead choosing our panels based on topics we wanted to learn about and contribute to the ongoing discussion of how to best approach these environmental issues.

Recently, one of our board members attended the documentary screening of *After the Spill: Louisiana Water Stories II* at the Joy Theater. After the film, a panel was held featuring James Carville, John Barry, and Nick Spitzer speaking about their roles in making the film. Although these panelists highlighted the historical environmental issues that Louisiana and the Gulf have faced, they focused on future struggles facing the region. Louisiana is still recovering from two of the greatest environmental catastrophes in American history, but better scientific understanding of the effects of climate change in Louisiana, technology to mitigate and adapt to changes, a new governor, a presidential election, and a changing public awareness position the State of Louisiana to be a trendsetter – a city on the front lines of a battle that many communities are facing against encroaching water.

Out of this panel, we finally arrived at our theme. This year, the Summit is about saving Louisiana as a model for saving other vulnerable communities. Many of the panels this year follow this theme—from sea level rise as a national security issue to the controversial Clean Power Plan to the success of the “green” redevelopment in New Orleans—and will highlight the legal and policy debates over how to best approach this battle and who will ultimately pay for its costs. We hope the Summit provides a platform for discussing how to ensure New Orleans not only survives this century, but also becomes a leader for other vulnerable coastal cities.

We are delighted that you will be joining us for what we hope is an informative, engaging, and fun weekend. I hope you enjoy yourselves and walk away knowing more than when you arrived. Planning this weekend has been a wonderful learning experience for me and I feel very fortunate to be part of a community that encourages and values the Summit.

With gratitude for your support,

Samantha Pfothenauer  
*Executive Chair*

## Friday, February 19th, 2016

**7:30-10:00 a.m.**

**Registration & Breakfast**

Weinmann Hall, Multi-Purpose Room

**8:00-9:00 a.m.**

**Professionalism: Generational Differences in a Millennial World**

Weinmann Hall, Room 110

At a time when diversity in the workplace is so often discussed, age differences are frequently omitted from the diversity context. These generational differences affect every workplace in America, especially law offices. New attorneys feel ostracized and discriminated against by senior members while senior partners feel that the incoming generation lacks respect and integrity. This panel will identify the realities of these generational gaps in the workplace, decode generational miscommunications, and offer real-life solutions to these issues.

**Lynn Luker**, *Of Counsel, Stanley, Reuter, Ross, Thornton & Alford*

**9:00-10:00 a.m.**

**Ethics: Client and Witness Candor in Trial Practice**

Weinmann Hall, Room 110

Almost every lawyer is aware of the saving grace in professional conduct Rule 3.3, the “actual knowledge” requirement. Even though some in the field use this to their advantage, many practitioners still feel uncomfortable treading too close to the line. This panel will reintroduce attendees to Rule 3.3 and discuss how to ethically manage client and witness testimony to avoid violating the Rule or being forced to withdraw as counsel.

**William Ross**, *Co-Managing Member: Stanley, Reuter, Ross, Thornton & Alford, LLC*

**Lynn Luker**, *Of Counsel, Stanley, Reuter, Ross, Thornton & Alford, LLC.*



**10:00-10:15 a.m.**

**A Short Welcome to This Years Summit**

Weinmann Hall, Room 110

**10:15-10:30 a.m.**

**15 Minute Break**

**10:30-11:50 a.m.**

**Water Rights, How do others do this?**

Weinmann Hall, Room 157

This panel will offer insights on recent developments in the field of international water law, including water regulation, policy, and rights. Often, these systems are tested when a nation is exposed to disaster and/or political strife. Ryan Stoa will address complex and overlapping water regulations in Haiti. David Takacs will analyze South Africa’s post-apartheid revolutionary legal vision for marrying social equity to ecology in fulfilling the right to water. As water resources in the United States are increasingly threatened, these examples provide lessons and guidance on using law to ensure a right to water.

**David Takacs**, *Associate Professor, University of California Hastings College of the Law*; **Ryan Stoa**, *Senior Scholar, Florida International University College of Law*;

**Caitrin Reilly** (moderator), *J.D., Senior Research Fellow, Tulane Institute on Water Resources Law and Policy*

**10:30-11:50 a.m.**

**The Sage Grouse Plan (Sponsored by Smith Stag LLC)**

Weinmann Hall, Room 251

The Department of the Interior recently announced the most ambitious species protection plan in history – deferring the listing of the Greater Sage Grouse under the Endangered Species Act. Proponents of this decision argue that a multi-state, multi-disciplinary conservation effort successfully demonstrates that threatened species can be saved without employing the ESA. Critics caution that although these efforts may be partially successful, the sage grouse will continue to need ESA protections. Policy makers should not rely on this example to reduce the protections of the ESA. Panelists will discuss both arguments.

**Randi Spivak**, *Director, Public Lands Program, Center for Biological Diversity*; **Tripp Parks**, *Policy Analyst, Western Energy Alliance*; **Thomas W. Sherry**, *Professor of Ecology and Evolutionary Biology, Tulane University*

## 21st Annual Tulane Environmental Law & Policy Summit

**11:50 a.m.-1:00 p.m.**

**Lunch**

Weinmann Hall, Multi-Purpose Room

**1:00-2:20 p.m.**

**BP Investor Liability, A Slap on the Wrist?**

Weinmann Hall, Room 151

The penalty phase of the BP litigation has involved penalties and settlements of unprecedented proportions under the CWA. Anadarko, a 25% non-operation owner of the Macondo well, is facing \$1 Billion in penalties. While much of the legal debate has centered on narrow, interpretive issues under the CWA, Anadarko also argues that penalizing them will negatively impact passive investment in future energy ventures across the United States. Following these arguments, Judge Barbier, District Judge for the Eastern District of LA, recently announced that Anadarko would only have to pay near \$160 Million. Attorneys from both sides will discuss the merits of the CWA issues and Anadarko's dire predictions.

**Randall Levine**, Partner, Morgan, Lewis & Bockius;

**Kenneth Engerrand**, President, Brown Sims, P.C.;

**Adam Babich** (moderator), Professor of Law and Director, Environmental Law Clinic at Tulane

**1:00-2:20 p.m.**

**Genetically Modified Salmon**

Weinmann Hall, Room 251

On November 20, 2015, the FDA approved GMO Salmon as fit for human consumption after a lengthy approval process. Advocates for the "frankensalmon" say it will help reduce overfishing, but critics fear GMO salmon will enter natural habitats and disrupt native species. Others caution that GMO salmon is unfit for human consumption. The FDA approval may open the doors for a host of other land and sea GMO species—currently in development—to enter the consumer marketplace. Panelists will discuss the salmon issue and the potential for GMO species to affect the Louisiana fishing economy.

**Ricardo Carvajal**, J.D., M.S., Hyman, Phelps & McNamara, P.C.; **Dr. Michael J. Blum**, Ph.D., Director of the Tulane-Xavier Center for Bioenvironmental Research, Tulane University; **Tim Schwab**, Senior Researcher Food & Water Watch; **Jaе Sun Schrader** (moderator), J.D. Candidate 2016, Tulane University Law School

**2:20-2:30 p.m.**

**10 Minute Break**

**2:30-3:50 p.m.**

**Environmental Journalism in the Era of Clickbait Content**

Weinmann Hall, Room 151

Between Hurricane Katrina and the BP Oil Disaster, Louisiana and the surrounding Gulf states were ground zero for two of the most pressing environmental stories of the 21<sup>st</sup> century. Four renowned local journalists will give insight on their careers and the relationship between journalism and environmental policy, an indispensable ingredient of environmental awareness in Louisiana and across-the-board. These journalists will also discuss their views on the future of environmental journalism, especially in the context of clickbait content online.

**Bob Marshall**, *The Lens*; **Clancy Dubos**, Co-Owner and Political Editor, *The Gambit*; **Debbie Elliot**, National Correspondent, NPR News; **Mark Schleifstein**, Environmental Reporter, *The Times-Picayune*;

**Dr. Bob Thomas** (moderator), Professor and Chair in Environmental Communication, Loyola University New Orleans



**2:30-3:50 p.m.**

**The Clean Power Plan**

Weinmann Hall, Room 251

The EPA and the Obama administration have introduced a groundbreaking new policy that seeks to cut the nation's carbon emissions from the power sector by 32% by 2030, and is viewed as the lynchpin of America's response to climate change. Does it go too far or not far enough?

**Pope Barrow**, Former Legislative Counsel of the US House of Representatives; **Bob Sloan**, Director of LSU Energy Law Center, Former General Counsel of Entergy;

**Suzanne Murray**, Partner, Haynes & Boone, Former General Counsel of EPA Region 6; **Kenneth Gelburd** (moderator), Federal Bar Association's Section on the Environment, Energy and Natural Resources

## 21st Annual Tulane Environmental Law & Policy Summit

**3:50-4:10 p.m.**  
**20 Minute Break**

**4:10-5:30 p.m.**  
**"Waters of the United States"**

Weinmann Hall, Room 151

On this phrase hangs the fate of nearly half of America's wetlands. After the release of the EPA's new "Clean Water Rule," three federal circuit courts have come to three different conclusions about what constitutes these waters. The outcome of this debate will have major impacts on both coal and fracking operations nationwide.

**Joseph Dellapenna**, *Professor of Law, Villanova University*; **Christopher S. Pugsley**, *Partner, Thompson & Pugsley; Counsel to the National Mining Association*; **Robert Verchick** (moderator), *Gauthier-St. Martin Chair in Environmental Law, Loyola University New Orleans*

**4:10-5:30 p.m.**  
**What happened at COP21 in Paris? What's next?**

Weinmann Hall, Room 251

In December 2015, the most comprehensive environmental protocol ever negotiated was consummated in Paris, with unprecedented unanimity among the parties in response to climate change. What does it call for? What happens next?

**Wil Burns**, *Co-Director, Forum for Climate Engineering Assessment*; **May Nguyen**, *Esq., M.A., Community Outreach Director, Tulane Environmental Law Clinic*; **Vicky Arroyo**, *Executive Director, Georgetown Climate Center*; **Gregor Trumel** (moderator), *Consul General of France in New Orleans*

**4:10-5:30 p.m.**  
**Rebuilding & Redeveloping New Orleans: A Push For A More Sustainable Future**

Weinmann Hall, Room 357

In the years since Katrina, New Orleans has seen tremendous change. As communities strove to rebuild what they had lost, they also used the opportunity to include more "green" practices during construction. This panel will discuss community efforts to encourage sustainable construction and land uses in New Orleans, and whether it is possible to develop a more resilient community without displacing the communities that reside there.

**Pres Kabacoff**, *Founder and CEO of HRI Properties*; **Dana Eness**, *Executive Director, Urban Conservancy*; **Jeffrey J. Thomas**, *Thomas Strategies*; **Colin Crawford** (moderator), *Robert C. Cudd Professor of Law and Executive Director, Payson Center for International Development*; **Lacy Strohschein** (introduction)

**5:30-5:45 p.m.**  
**15 Minute Break**

**5:45 p.m.**  
**Awards Ceremony**

Weinmann Hall, Room 110

Please join us as we present Mr. Bill Borah with the Tulane Environmental Law & Policy Summit Award in recognition of his lifetime service in environmental advocacy and historical preservation in New Orleans. Mr. Borah is a Tulane Law graduate who has been deeply involved in transportation and land use issues his entire career. He has successfully opposed the construction of an elevated, 6-lane highway along the Vieux Carré riverfront in front of Jackson square and the construction of a bridge at Napoleon Avenue, whose six-lane approach system was slated to slice uptown New Orleans in half. Mr. Borah also helped establish a streetcar line along the downtown riverfront, represented five non-profit in challenging Wal-Mart from developing in New Orleans historic district, and drafted part of a law that requires New Orleans to develop a legally binding plan to direct future development. He has contributed greatly to our community, and we are proud to recognize his achievements.

**5:50 p.m.**  
**Keynote Address**

**Hilary Tompkins**, *Solicitor, U.S. Department of Interior*  
Weinmann Hall, Room 110

Before Ms. Tompkins was the chief general counsel for the Department of Interior, she worked as a tribal court advocate for the Navajo Nation Department of Justice, Special Assistant U.S. Attorney, and chief counsel to the governor of New Mexico. During her keynote, she will discuss how her career path led her to her current position and influenced her approach to the many American Indian law, environmental law, and land use issues she handles every day. Nearing the end of her term as Solicitor, Ms. Tompkins will also comment on the environmental challenges she's faced during her time at the Interior, and what she's learned from those experiences.



**Please Join Us For A Reception Immediately Following The Keynote Address**

Weinmann Hall, Multi Purpose Room

## Saturday, February 20<sup>th</sup>, 2016

**8:00-9:00 a.m.**

**Check In and Breakfast**

**9:00-10:20 a.m.**

**Urban Farming (Sponsored by Loyola University Center for Environmental Law)**

Weinmann Hall, Room 151

Urban farming is gaining traction in cities all over the country, but face a hedge-podge of local requirements. This panel will discuss the zoning laws that are currently in place, and what future policy choices might look like.

**Marianne Cufone**, *Executive Director, Recirculating Farms Coalition*; **Johanna Gilligan**, *Founder & Executive Director, Grow Dat Youth Farm*; **Emily Prince** (moderator), *Summit Executive Chair Emeritus, J.D. Candidate 2016*

**9:00-10:20 a.m.**

**China Going Forward**

Weinmann Hall, Room 251

As China consumes ever-more fossil fuel, the government has begun to take stricter action to combat the environmental impacts of this growth. Experts debate how effective these new regulations have been and comment on potential future developments.

**Joseph Dellapenna**, *Professor of Law, Villanova University*; **Han Chen**, *International Climate Advocate, Natural Resources Defense Council*; **Hao Jiang** (moderator), *Shanggong & Partners LLP, Whitehead Law Firm*

**10:20-10:30 a.m.**

**10 Minute Break**

**10:30-11:50 a.m.**

**The Louisiana Environmental Agenda, a New Orleans View**

Weinmann Hall, Room 151

Leaders from several deeply-immersed environmental groups will discuss their views on the most urgent issues facing the state and how to address them. The theme: new governor, new agenda. Ideas and suggestions from the audience are welcome.

**Raleigh Hoke**, *Campaign Director, Gulf Restoration Network*; **Anne Rolfes**, *Founding Director, LA Bucket Brigade*; **Kathleen Rhorer Wascom**, *Legislative Liaison, Louisiana Environmental Action Network*; **Corinne Van Dalen** (moderator), *J.D.; Clinical Instructor, Tulane University Law School*

**10:30-11:50 a.m.**

**National Security and Climate Change**

Weinmann Hall, Room 251

Climate change is not only an environmental threat, but also a serious threat to domestic and international security. Congress possesses the constitutional authority to plan for this growing national security threat, but at what point does the President, as Commander-in-Chief, have the power to directly combat climate change through an executive order?

**Mark Nevitt**, LL.M., J.D., *Georgetown University Law Center*; **Professor Werhan**, *Professor, Tulane Law School*; **Edward P. Richards** (moderator), J.D., M.P.H., *Director, Program in Law, Science, and Public Health, Clarence W. Edwards Professor of Law, LSU Law Center.*

**11:50 a.m.-1:10 p.m.**

**Lunch**

Weinmann Hall, Multi-Purpose Room



**1:10-2:30 p.m.**

**Beyond Denial**

Weinmann Hall, Room 151

What cultural factors drive individuals to form their beliefs about climate change? What roles do science, politics, sense of community, and self-identity play in this struggle? Experts weigh in on how policy can be informed by these factors.

**Jaime Madrigano**, *ScD, MPH, Associate Policy Researcher, RAND Corporation*; **Robert Verchick**, *Gauthier-St. Martin Chair in Environmental Law, Loyola University New Orleans*; **Eric Dannenmaier** (moderator), *Director, Environmental and Natural Resources Law Program, Indiana University Robert H. McKinney School of Law*

1:10-2:30 p.m.

**Taken by Storm: Climate Change and Property Takings**  
(Sponsored by Tulane GSSA)

Weinmann Hall, Room 251

The US Constitution provides that when the government seizes or regulates private property, it is supposed to pay for it. There are exceptions for public necessity and public protections, but just what are they and how might they apply in times of rising sea levels, climate change, and massive wildfires? The courts aren't quite sure, but this panel will help you understand the state of the law and why it matters.

**Justin Pidot**, Associate Professor, University of Denver Sturm College of Law; **Randy Smith**, Partner, Smith & Fanyer; **James Gette**, Principal Deputy Chief of Natural Resources of ENRD, Department of Justice; **Mark Davis** (moderator), Professor, Tulane Law School; Director of the Tulane Institute on Water Resources Law and Policy

2:30-2:40 p.m.

10 Minute Break

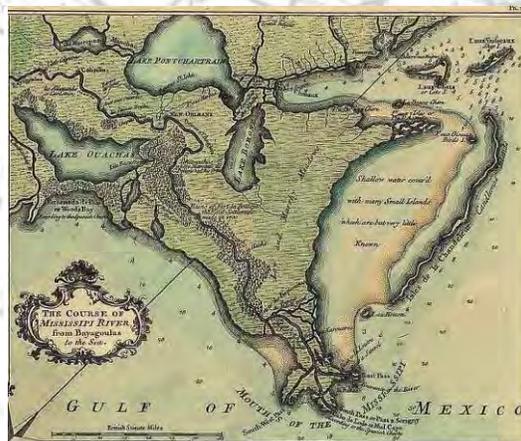
2:40-4:00 p.m.

**Legal Fictions that Harm Environmental Restoration**  
(Sponsored by Vernon, Bice, Palermo & Wilson)

Weinmann Hall, Room 151

The Levee Board Suit, *In Re Katrina Breaches Litigation*, and other lawsuits have forced state and federal judges in Louisiana to provide answers to difficult legal questions. Thus far, these answers have blocked plaintiffs from holding the oil & gas industry or the Army Corps responsible for depleting Louisiana wetlands. Panelists will discuss the legal theories behind these lawsuits and highlight the legal “fictions” that have stood in the way of coastal restoration.

**D'ann Penner**, Vernon, Bice, Palermo & Wilson, LLC; **Bessie Daschbach**, Member, Jones, Swanson, Huddle & Garrison, LLC; **Rock Palermo**, Partner, Vernon, Bice, Palermo & Wilson, LLC; **Bill Goodell** (moderator), Adjunct Professor of Law, Tulane University Law School, Goodell Law Firm



2:40-4:00 p.m.

**The Solar Storm**

Weinmann Hall, Room 251

In June, the Louisiana legislature capped the state solar tax credit. Although a rush to get the last available credits created a boom over the summer, many business worry that the loss of the credit—among the most generous in the country—will see consumers turn away from solar. However, in December, Congress renewed the federal solar tax credit until at least 2020, providing a boost to those businesses that worried they would soon lose the support of the federal credit as well. Experts discuss the state of the solar industry both locally and nationally.

**Eric Dannenmaier**, Director, Environmental and Natural Resources Law Program, Indiana University Robert H. McKinney School of Law; **Andrew Owens**, Director, Regulatory Research at Entergy; **Jeff Cantin**, CEO, Solar Alternatives; **Dean Boyer** (moderator), Senior Research Fellow at the Tulane Institute on Water Resource Law and Policy

## 21st Annual Tulane Environmental Law & Policy Summit

**2:40-4:00 p.m.**

### **Dead Zones**

[Weinmann Hall, Room 357](#)

The national response to the spread of hypoxia (low oxygen) in the Gulf of Mexico began with a petition filed under the Clean Water Act in 1995. Twenty years later, the Action Plan for Reducing Hypoxia in the Gulf of Mexico has been revised to aim at reaching its goal of an average annual size of 5000 square kilometers for the hypoxic zone by the year 2035, with an Interim Target of a 20% reduction in nutrient (nitrogen & phosphorus) to the Gulf by 2025. This panel will discuss the questions: What are the legal and policy tools available to utilize in reaching this goal, and what are their prospects for success? How can they be applied in Louisiana and the other Mississippi River Basin states? Are there realistic cost estimates for reaching the Target and Goal?

**Doug Daigle**, *Coordinator, Louisiana Hypoxia Working Group*; **Dr. John Westra**, *Professor, Department of Agricultural Economics and Agribusiness, LSU*; **Scott Edwards**, *Assistant State Conservationist for Partnerships and Initiative, USDA*; **Alex Kolker**, *Professor, LUMNOC*

**4:00-4:15 p.m.**

**15 Minute Break**

**4:15 p.m.**

### **Keynote Address**

**Vicki Arroyo**, *Executive Director, Georgetown Climate Center*

[Weinmann Hall, Room 110](#)

Ms. Arroyo will be taking a comparative look at how coastal cities extremely vulnerable to climate change, like New Orleans, are developing policy to adapt and mitigate the effects of Climate Change. As a New



Orleans native, she will start with the lessons from Katrina that the greater environmental policy community is just beginning to understand. She will then discuss how

the interplay between state and federal leadership has produced very different outcomes in policy development and how COP21 will affect each city moving forward.

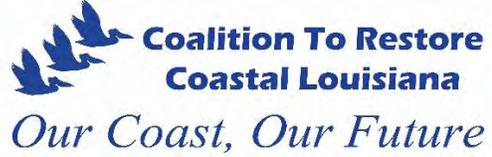
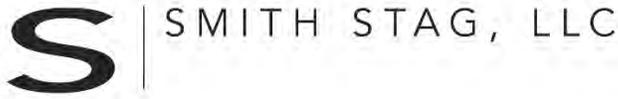
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[Weinmann Hall, Multi-Purpose Room](#)



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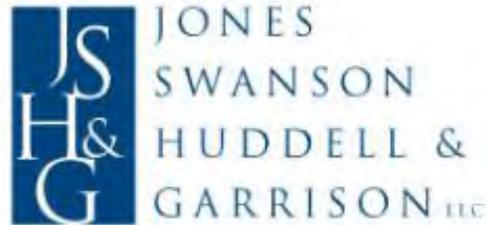
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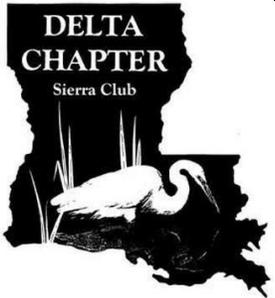
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