SAVING THE CHESAPEAKE:
TULANE LAW LENDS A MAJOR HAND

A federal court victory upholding the multistate, multi-agency Chesapeake Bay plan was a milestone in restoring the waterway. (American Farm Bureau Federation v EPA, 792 F. 3d 281 (3d Cir 2015))

Following the appellate decision, over the vigorous opposition of the American Farm Bureau, National Pork Producers, U.S. Poultry & Egg Association and others, the Chesapeake Bay Foundation convened a gathering to answer a key question: the Bay is still in bad shape, state implementation is spotty, so where do we go from here?

Tulane Law Professor Oliver Houck, an authority on the Clean Water Act, delivered the keynote. And an array of Tulane environmental law alumni who’ve been deeply involved in Chesapeake Bay work spoke about next steps.

Houck said that addressing the root source of the problem, non-point pollution, requires financial incentives beyond those meager sums now devoted to paying farmers for cover crops and streamside vegetation.

The federal government spends “stupendous sums of money” on crop insurance and outright subsidies (billions of dollars for corn alone), he said, but none are conditioned on protecting the water.

“In effect, we are paying industrial agriculture to pollute,” he said. The money exists but needs to be leveraged, he said. Otherwise, environmentalists may be able to hold the line, but the nation’s clean water goals will remain unattained.

Among the Tulanians working on Chesapeake Bay cleanup:
Michele Merkel (L ’95) is co-director of Food & Water Justice, the legal arm of national nonprofit Food & Water Watch. She is particularly active in legislation and litigation “to force big poultry companies, like Perdue and Tyson, to take responsibility for their waste that is burdening contract growers and decimating the bay watershed.”

Betsy Nicholas (L ’98) is executive director of Waterkeepers Chesapeake, a coalition of 19 river, harbor and coast keeper organizations in the mid-Atlantic region. Her focus has been on Clean
Water Act responsibilities. She has more than 16 years of environmental law and policy experience, including work for the U.S. Justice Department and for law firms in New York and Washington, D.C.

**Brett Korte (L ’14):**

Choose Clean Water Coalition, which firms in New York and Washington, D.C.

**Betsy Nicholas, Chesapeake Waterkeepers**

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**Barrett Ristroph (L ’04):**

Going Native … and Far Afield

In less time than it takes to make partner in a corporate law firm, Barrett Ristroph has compiled a travellogue of law experiences increasingly focused on indigenous peoples: “I have managed to miss almost every Mardi Gras while working off the beaten path,” she said.

Soon after graduation, she clerked for a territorial judge in the Northern Mariana Islands, where issues of territorial self-governance were rising. In the Philippines, she analyzed an evolving “environmental rule of law” and its relationship to human rights agreements. Most recently, she has worked in the high Arctic of Russia and now in Alaska, where she married Athabascan tribal leader P.J. Simon.

Ristroph said one of her proudest moments was being asked to “cut and serve a recently harvested whale,” though she’s a vegetarian who “importing soy powder from 3000 miles away.” Her life is a fusion of things: western science and community knowledge, community personality and western law, cooked food and fresh raw. That includes her new life as a vegetarian who was “importing soy powder from 3000 miles away.”

Note: For more on the cleanup program’s background, see Houck, “The Clean Water Act Returns (Again): TMDLs and The Chesapeake Bay Program” (ELI 2011) and “Cooperative Federalism, Nutrients, and the Clean Water Act: Three Cases Revisited” (ELI 2014).

Barrett Ristroph and P.J. Simon

THE DIVERSITY OF LIVES: ENERGY AND ENVIRONMENT

ALUMNI SPREAD THEIR INFLUENCE ACROSS THE GLOBE

The depth and range of Tulane Law School’s Energy and Environment alumni continue to expand. This sampling, taken from dozens of reports that faculty receive, demonstrates the impact TLS graduates make on the world.

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In the end, the state high court in Avenal v. Louisiana, 88 So. 2d 1085 (2004), overturned the verdicts, interpreting lease clauses as waiving liability from state restoration projects and the takings doctrine as excusing state acts based on “background principles of law,” which in this case was the existential “necessity” of coastal protection.

This would have ended the matter for Wilson, but not his involvement in the issue. He became an oyster advocate. Over the past two years, he helped with passage of two significant state oyster bills, (now Acts 570 and 595) working with the Louisiana Oyster Task Force and the Corps diversions, intended to remedy this phenomenon, also created new sets of losers from slugs of fresh water, who then sued for damages under the state and federal takings clauses.

Wilson defended the state. What followed at the trial level and beyond was a saga too complicated to tell here, although he is in the process of producing a book on it titled “Oysters Rockefeller,” not only due to the delicacy that carries its name but also because the damage awarded in the courts below was a bank-breaking $2 billion.

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testifying before the Louisiana Senate to that end. Wilson also is handling the first permit application for off-bottom oyster production on private lands (in sacks and cages, safe from predators and easier to harvest and ship). What this may do to traditional reef structures on which fisheries and coastal protection depends remains to be seen, but the project certainly seems worth exploring. Here, then, is to Andy. We use a shackling knife, pry open the shell, add a dash of copper, raise a glass and away we go.

Diana Csank (L ’10): Joining the Fray
What we remember most about Diana Csank was independence: in the classroom, on research projects and on canoe trips, where she would paddle an array of 15-person human pyramid shot standing next to it — on her head. She added something a little bit spectacular, and a driving energy.

After graduation, she worked with the Council on Environmental Quality’s Office of Counsel, largely policy work, getting the feel of things. Now, she’s with the Sierra Club in Washington, D.C., working on an ambitious litigation agenda linking energy and the environment.

She wrote: “I now split my time between demand side (retiring coal, pushing clean) and supply-side (fighting fracked gas drilling and infrastructure) … see, for example, our latest move on public land and pipelines.”

In one case, “Kinder Morgan shelved a huge fracked gas pipeline in New England,” and she reported “wins on the coal side, too,” concluding, “I’m proud of the work we’ve been doing in the climate movement, even if there is an inordinate number of wrongs still left to right.”

Later, she wrote about efforts to protect critical habitat for endangered Atlantic Sturgeon in the Delaware River: “My best 24-hour period in recent memory was a mad dash to the super bloom in Death Valley, with two environmental lawyers who knew the Eastern Sierras like the back of their hand,” she wrote. “Last weekend, I took a short NEPA tour through Southern Maryland with stops at Calvert Cliffs, plus some paddling that brought back memories of Nat Res class and the Wolf River.”

Murray Liebman (L ’91):

Connecting on energy
Murray Liebman is president of Liebman & Associates, a Washington, D.C., clean energy and environmental consulting and advocacy firm that specializes in connecting sustainable energy projects with federal agency programs. Under the Energy Policy Act of 1992, the Department of Energy can invest up to 80 percent of project costs for research and development, and up to 50 percent for demonstration and commercial stages. DOE’s National Laboratories offer highly coveted technical assistance as well. Liebman has helped its clients secure nearly $1 billion from the federal government, leveraging billions more in private-sector investment.

Liebman wrote that, coming out of law school, he sought something besides a law firm experience: “I wanted an entrepreneurial opportunity with direct exposure to decision-makers, which brought me to government service at the White House Office on Environmental Policy and DOE. I was constantly exposed to industry executives interested in exploring new policies, technologies, financial methodologies and programs.”

As Dr. Robert Reich noted in The Work of Nations, ‘strategic brokers’ are needed to drive good ideas forward. Starting a company can be scary.

Especially at the beginning, I sometimes wondered whether L&A would be able to pay the rent. We started with one client, and before I knew it, we had a portfolio of great companies pursuing a variety of world-class projects.”

“Tulane Law, where he was senior articles editor of the Environmental Law Journal, ‘prepared me for the world and not just the law library or a court room,’ he wrote. “Strategic planning is important, and so is maintaining a genuine openness to the concerns of others. Law firms are not a requirement for personal or professional success. Work really hard and be open to opportunities — big and small — because you never know who they will lead I love where they have led every day.”

Jared Sternberg (L ’13):

Promoting Ecotourism
Jared Sternberg attended Tulane to study environmental law and sustainable development, imagining himself landing with an NGO or human rights institution: “I wanted to be the guy suing on behalf of the environment, for the wildlife and indigenous populations,” he said. “I wanted a voice for those without one.”

But he found a different angle: ecotourism.

“I had seen the Amazon Rainforest and its people, I had seen poverty in sub-Saharan Africa, I had seen indigenous rights trampled in Nicaragua and elsewhere, and I had seen people struggling to overcome — smiling and strong,” he wrote. “My travels made me wonder whether L&A would be able to pay the rent. We started with one client, and before I knew it, we had a portfolio of great companies pursuing a variety of world-class projects.”

He said he felt compelled to share with the world. Sternberg launched Gondwana Ecotours, an international ecotourism company, during his final semester at Tulane Law. The company has drawn attention from Forbes, The New York Times, the Chicago Tribune and the Los Angeles Times, among others.”

“My hope is that Gondwana will bring local economies and environments around the world,” Sternberg wrote. “My time at Tulane gave me the tools for what Gondwana is today, and will become. Gracias for all the lessons … and support.”

Francisco Bustamante (LLM ’09):

Expanding nature’s rights
Francisco Bustamante took his degree back to Ecuador and immediately put it to use. Joining the Ministry of Environment (2009-12), he was tasked with developing government policies to implement the then-recent Pachamama provisions of the amended constitution, which boldly extended protections to nature itself.

His work went on two parallel tracks, the rights of nature and concomitant policies of reparations for environmental damages. That is a Superfund-like concept applied to a wider range of environmental harms, based, he wrote, “on the principles of integral reparation contained in inter-American instruments of human rights.”

For the past three years, Bustamante has served as legal adviser for the Constitutional Court of Ecuador. He also teaches in Quito, and his curriculum includes courses in human rights, the environment and constitutional law.”

The constitutional environmental law course has been a great experience so far, and a personal achievement for me because it is a course never considered in my county before,” he wrote.

Mary Kathryn Nagle (L ’08):

Taking the stage
Mary Nagle has presented theatre audiences across the United States with a series of remarkable plays turning on Native American and environmental rights.”

As lawyers, we know the power of a good story,” she wrote. “I believe the more we tell these particular stories, the more likely we are to succeed in shaping law so that it truly protects our lands, our lives and our communities.”

Nagle wrote her first play while an undergraduate at Georgetown University, in her childhood town under the flames of a world-leading lead smelting operation that later led to Superfund action and to maladies she still suffers from.

After graduating with distinction from Tulane Law, she clerked for a federal judge then practiced at a high-powered trial law firm in Manhattan, bringing damage actions against financial institutions for the mortgage meltdown that crippled the country. She described the cases as “heady” and the work pace “exhilarating” and “brutal.”

Nagle, an enrolled citizen of Cherokee Nation, then returned to her roots with a law practice in Washington, D.C., focused on Native American law — and to playwriting, which she had never abandoned. Her plays clearly reflect what she has experienced, felt and learned, and they’ve been produced on college campuses, off-Broadway and at the Smithsonian Institution, the federal courthouse in Omaha, Nebraska, and the former Le Chat Noir in New Orleans.

Mary Kathryn Nagle

SAMPLE PLAY LIST

Miss Lead: In the aftermath of World War II, lead smelter fallout has touched down in town, bringing dismay, denial and a gamut of other emotions.

Katrina Stories: Students are thrown into the diaspora by the hurricane that devastates New Orleans in 2005, while particulars of hurricane and confusion as families try to come to grips.

Waaxe’s Law: In 1879, the U.S. District Court in Nebraska declared Indians to be “persons” under the law. The play chronicles Chief Standing Bear’s 600-mile journey for justice and his unprecedented victory in federal court.

Manahatta: Jane Snake, a Native American woman with a Stanford MBA, reconnects with her ancestral homeland. Manahatta asks, does she join a major investment bank just before the financial crisis of 2008?

Diamonds are a boy’s best friend: Nathan, a Supreme Court clerk, battles for the constitutionality of the Violence Against Men Act as he also tries to process his identity as a survivor.

Siver of a full moon: A movement led by tribal leaders and women survivors culminates in amending the Violence Against Women Act to restore criminal jurisdiction over non-Indians who commit acts of domestic violence against tribal citizens on tribal lands.

Fairly traceable: A young Ponca man faces climate change catastrophe and the intractable principles of legal standing.
Professor Günther Handl
Publications:

Professor Oliver Houck
Publications:

Book review/essays:
“In the Kingdom of Ice,” The Environmental Forum, September/October 2015.

Presentations:
“Saving the Fly,” Audubon Institute, May 2016.
“Beyond TMDLs,” Symposium, Chesapeake Bay Foundation, April 2016.
“After the Storm,” Katrina Retrospective, Tulane Law School, August 2015.
“Hidden Opportunities,” Coalition to Restore Coastal Louisiana, March 2015 (accompanying Coastal Stewardship Lifetime Achievement Award).

Taking Back Eden goes to China
Professor Oliver Houck’s Taking Back Eden (Island Press, 2010) tells the stories of eight cases around the globe that jump-started judicial attention to environmental protection in their host countries. Beginning with Storm King Mountain in the United States, the book moves to Japan, Canada, India, Russia, the Philippines, Greece and finally Chile, presenting a mosaic of citizen action and the judicial role. These days, it’s China’s turn, and to facilitate an understanding of these developments, Tulane LLM graduate Mingqing You (LLM ’05), now with Wuhan University and a regular reporter of recent developments in his country, has arranged a Chinese translation of Taking Back Eden for academics, government officials and the general public. China now is experimenting with several forms of citizen action in environmental protection, including judicial review. It is our hope that this book and its examples will assist in the development and wise use of this approach.

Far East Scholars in Residence
Tulane Law School welcomes visiting research professors from China and Japan: Hiroki Kobayashi (LLM ’05) is a professor of law at Shizu University’s School of Economics and Law and specializes in energy issues relating to disasters and to renewables. He will study the U.S. experience with renewables in several venues, and at Tulane will link up with Louisiana regulators, agencies, private companies and NGOs.
Assistant Professor Hongxin Guo of Zhongnan University of Economics and Law is visiting for the fall 2016-17 academic year. Her research is stimulated by recent mass protests against the human and environmental impacts of government projects, several of which have reached U.S. reporting services. She intends to apply “risk regulation theory” to analyze the reasons behind these protests, the risks they pose and how to reduce them via a greater recognition of citizen rights.

International students in Tulane’s LLM Environmental and Comparative Law Seminar for 2016-17
International students in Tulane’s LLM Environmental and Comparative Law Seminar for 2016-17 are: Front row: Po-Cheng Lin (China), Soma Ahmad (Pakistan), Andres V. Mejia (Panama), Paulina Andrade (Ecuador), Mariela Martinez (Costa Rica), Daniel Nunez (Colombia) and Eduardo Mendes (Ecuador). Back row: Mauricio Nagermueller (Germany) with Professor Oliver Houck.
The answers to those questions were not clear, and they still aren’t yet. Some of them had not really been asked before. It became the job of Institute program manager Christopher Dalbom to find the answers. Fortunately, he and the Institute knew where to turn. Within a few months, a team of hydrologic modelers with experience in Louisiana’s surface, ground water and coastal waters had been assembled.

Coming from Tulane, The Water Institute of the Gulf, The Nature Conservancy and Louisiana State University, team members bring special tools and expertise to the task of, effectively, creating a water inventory and budget for Louisiana by gathering pieces the way one might when assembling a puzzle. The early results are exciting and encouraging. The pieces and people are coming together, and the hope is to begin an actual merger of those efforts.

Pulling the pieces together will take several years to do well, and Tulane’s Institute will take on the lion’s share of the work to support the Water Code Committee, which itself has precious few resources. In addition to Davis and Dalbom, post-graduate research fellows Caitrin Reilly and Dean Boyer have been deeply involved in the project. The Institute’s work is supported by the Mc Knight Foundation, The Baton Rouge Area Foundation, the Greater New Orleans Foundation, the Louisiana State University Sea Grant Program and the Kabacoff Family Foundation.

Hey Buddy, Can You Spare a Few Billion?
“We could have saved the Earth, but we were too damned cheap,” Kurt Vonnegut said.

Was Kurt right? We hope not, especially where the communities and natural wonders of coastal Louisiana are concerned. Over the past 10 years, a huge amount of energy, talent and time has gone into making plans to “restore” the coast, build stronger levees and manage water more smartly. But all of those things cost money, money that folks like to think is somebody else’s job to provide. Bringing all of that into focus is a job the Institute has taken on with its Financing the Future project. Two years ago, the Institute’s first Financing the Future report concluded that the cost of all the things that need doing would be roughly double the $50 billion price tag touted in Louisiana’s official 2012 Coastal Protection and Restoration Master Plan. In 2015, in its second report, the Institute concluded that only about $21 billion in funding had been lined up. These twin conclusions, while not what people wanted to hear, have been widely accepted, including by all of the major candidates in Louisiana’s 2015 governor’s race.

The Institute, with post-graduate research fellow Dean Boyer at the helm, is looking at the options for financing the gap. Fundamental to this work is the understanding that the value of protecting, restoring and conserving this region, to the extent it can be done, is vastly greater than the currently projected costs.

Climate change adaptation, coastal restoration and everyday life have something in common: they all involve using and managing water. In Louisiana, planning for water has not focused much on the need for comprehensive laws and policies. After all, we’ve always assumed we had more than enough.

That is changing, thanks to a growing awareness that even here water is a limited and valuable resource. In 2014, the Louisiana Senate asked the Louisiana State Law Institute to form a Water Code Committee to draft a set of water laws that allow the state to manage water more comprehensively. The Louisiana State Law Institute, in turn, asked Tulane Institute on Water Resources Law & Policy Director Mark Davis to lead that committee.

The easy thing would have been to assemble some smart lawyers, find some good models from other states and start writing. The first two things did happen, but nobody has started drafting yet. Why? Because comprehensive water law demands — or ought to — more than an understanding of general legal principles. It requires an appreciation of science, culture and the fact that water is more than just a natural resource: it is essential to life.

Accordingly, the first questions facing the institute team are: How much water does Louisiana have? Where is it? How does it work? What is it needed for?
By Samantha Pfotenhauer (L ’17)

Interior Department Solicitor Hilary Tompkins addressed energy production, while climate specialist Vicki Arroyo delved into disaster resilience as Tulane’s Summit on Environmental Law & Policy once again tackled some of the most pressing challenges in the energy and environment fields.

The 21st annual event, held in February 2016, attracted more than 300 students, lawyers, academics and representatives from government, industry and nonprofit groups for two days of panels covering topics ranging from the Obama administration’s Clean Power Plan to urban farming and environmental journalism. Tulane Law alumn Bessie Antin Daschbach (L ’01), who discussed her work as an associate at Jones, Swanson, Huddell & Garrison, also described her work on coastal land loss litigation against 97 oil & gas companies.

A New Orleans native, Arroyo currently is executive director of the Georgetown Climate Center. Her presentation drew tears, outbursts of laughter and even a couple of angry questions from the audience as her talk transitioned into group reminiscing on the irreplaceable culture of a city facing overwhelming challenges.

At the end, the audience gave both speakers a standing ovation. The Summit, which is free and open to the public, is fully student organized, and it was well-received by attendees, who gave the speakers a standing ovation.

Tompkins, the Interior Department’s top lawyer since 2009, used her keynote to discuss her role in handling issues such as offshore oil and gas leasing and coastal land loss litigation against 97 oil & gas companies.

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Tulane Law student residences organizing the 2017 Summit on Environmental Law & Policy are: Alex Hannah Polakowski, Ryan Cordell and Catherine Crawford.

Save the Date
23rd ANNUAL SUMMIT March 10-11, 2017

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Catherine Crawford (L ’18)

Louisiana Department of Environmental Quality

As a regulatory and litigation law clerk in the legal division for the Louisiana Department of Environmental Quality, Ms. Crawford focuses on environmental compliance and enforcement. She wrote many petitions, motions and settlement responses and was able to go to court with one of the in-house counsel to hear oral arguments. She was asked to write a guide document for LDEQ describing the specific process the agency must go through to begin using drones to inspect and regulate facilities in the future.

New York City Department of Environmental Protection

I worked for the New York City Department of Environmental Protection, the administrative body that regulates the city’s air, water and noise pollution standards and controls the water supply for all the New York City boroughs. I conducted research on various issues pertaining to water utility law, energy law, administrative procedure and pollution law. I also represented the city at the Environmental Control Board of the Office of Administrative Trials and Hearings to enforce asbestos and noise violations and to attain residents’ compliance with the city’s backflow prevention program.

Brendan Hughes (L ’17)

Honolulu, Hawaii

I worked on high-profile environmental cases, like the Refugio oil spill in Santa Barbara and the Aliso Canyon gas leaks in Porter Ranch. My favorite part was attending hearings and going on site visits to locations, including the Bullona Wetlands and the Port of Los Angeles.

Ashtyn Smith-Sawka (L ’18)

Earthjustice

Tallahassee, Florida

I worked as a law clerk for Earthjustice, where my main projects involved establishing causation between agricultural soil components and toxins that were bioaccumulating in wetland wildlife, and pinpointing the procedural requirements for federal and state agencies to issue permits to a coal ash landfill. Finding positive precedent case law in the 11th Circuit and navigating the Administrator Procedure Act was no walk down a nature trail, but the attorneys at Earthjustice made sure their interns got a taste of the natural resources we sought to protect. They brought us on a boat tour of Wakulla Springs, to watch sea turtles being released at St. Marks Lighthouse and to watch dolphins at the Tallahassee Museum. This aspect of my summer experience was indispensable because it helped to establish a passion for our projects and empathy towards our clients’ injuries.

The highlight of my clerkship with Earthjustice was attending the Everglades Coalition environmental law clinic in Naples, Florida. Earthjustice attorneys presented on topics such as federal natural resources law, state environmental law, information gathering and public records requests and strategies for preparing for litigation.

Amanda Callihan (L ’17)

General Counsel’s Office

Tallahassee, Florida

I worked as a legal intern for the California Attorney General’s Office of Los Angeles.

As a legal intern, I worked for the California Attorney General’s Natural Resources Law Section, I worked on research as well as drafting motions and discovery requests for cases involving the various state water boards, the Air Resources Board, the California Department of Fish and Wildlife and the California Department of Forestry and Fire Protection. I really enjoyed working in an office that handles cases with such varied fact patterns and high-profile environmental cases, like the Refugio oil spill in Santa Barbara and the Aliso Canyon gas leaks in Porter Ranch. My favorite part was attending hearings and going on site visits to locations, including the Bullona Wetlands and the Port of Los Angeles.

Amber DeGuzman, Brian Brinster, Teika Himrer, Amy Feldberg, Marisa Andrews, Lizelle Garcia, Hannah Polakowski, Ryan Cordell and Catherine Crawford.

By Samantha Pfotenhauer (L ’17)

Ex-Executive chair, 2016 Summit

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TULANE ENVIRONMENTAL LAW CLINIC: Working cases from the Atchafalaya to the Mississippi to the Gulf

By Professor Adam Babich
Tulane Environmental Law Clinic director

The Tulane Environmental Law Clinic’s student-attorneys continue to represent clients seeking to protect the Atchafalaya Basin. Non-Louisianans may know the basin from the PBS documentary “Atchafalaya Houseboat,” or from the photographs of C.C. Lockwood (including the U.S. Post Office’s 2012 Louisiana “Forever” stamp). But the basin’s also a valued national resource: it is the nation’s largest river swamp, with 885,000 acres of forested wetlands and 517,000 acres of marshland, according to the U.S. Geological Survey. It is also central to Louisiana’s Cajun culture, having enabled generations to make a living from crawfish, fishing and hunting.

But the basin faces “death by a thousand cuts” as oil and gas exploration and production, logging, private hunting reserves, road-building and other encroachments disrupt natural hydrology, destroy cypress stands and block access to traditional fishing grounds.

Many projects in the basin require the U.S. Army Corps of Engineers’ approval, as they involve destruction of wetlands and are thus subject to the Corps’ permitting system under the Clean Water Act. The Corps, however, is an inconsistent protector of the basin at best. Its enforcement division does not even have boats to inspect for compliance. Although Corps personnel will ride on permittees’ boats (and therefore see what the permittees choose to show them), Corps policy prohibits inspectors from riding on our clients’ boats.

The Corps approves many projects in the basin under “general permits,” which by law are supposed to have “only minimal cumulative adverse effect on the environment.” Corps authorizations under these permits can be fast and loose and can occur without public notice or opportunity to comment. Clinic clients Atchafalaya Basinkeeper, the Louisiana Crawfish Producers Association-West and Gulf Restoration Network challenged reissuance of one of these permits after it became apparent that 1) the Corps authorized projects under the permit after it expired and before reissuance; 2) in reissuing the permit, the Corps skipped the step of looking at cumulative impacts under the National Environmental Policy Act; and 3) the Corps failed to determine whether the permit would result in “only minimal” impacts.

On June 8, 2016, a U.S. District Court remanded the permit for reevaluation, which presumably will lead to reform of this particular permit. A victory, therefore, for our clients and our student attorneys! But it is not the victory we wanted it to be. A “voluntary” remand avoids a public airing of the Corps’ deeply flawed standard operating procedure.

One lesson for our students: administrative law, which is what allows our clients to challenge Corps actions, is an inherently frustrating tool. However, it is administrative law that empowers ordinary citizens to call out the U.S. government — the world’s most powerful sovereign — in a public courtroom.

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Recent accomplishments

On Aug. 31, 2016, the Environmental Protection Agency granted the lion’s share of a petition that TELC submitted on behalf of clients objecting to a proposed methanol plant in St. James Parish, Louisiana. The state’s Department of Environmental Quality had issued a Clean Air Act permit for construction of the plant without state-of-the-art technology to limit release of volatile organic chemicals, greenhouse gases and other chemicals. The state’s theory was that plant emissions would be under the thresholds that trigger the requirement for state-of-the-art controls. EPA, however, found that the state’s permit limits are not adequate to keep emissions below those thresholds. This is because key permit requirements are not enforceable and the permit does not limit all emissions, such as those during times of malfunction.

Student-attorneys presented oral arguments in U.S. District Court on behalf of the Charter Fisherman’s Association (CFA) in successfully defending a federal rule governing red snapper fishing by charter boats and private anglers. On Jan. 5, 2016, the court upheld Amendment 40 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico under the Magnuson-Stevens Act.

Student-attorneys also helped negotiate a settlement that resulted in an Oct. 7, 2015, federal consent decree under which United Bulk Terminals Davant agreed to update its pollution-control technology and undertake other measures to prevent spills of coal and petroleum coke into the Mississippi River. UBT also agreed to pay $75,000 to the Woodlands Conservancy to fund coastal restoration projects.

Awards

The Walter L. Cohen Alumni Association presented the Tulane Environmental Law Clinic with a Certificate of Appreciation in March 2016 for helping to derail a proposed move of the Cohen school, which has a predominantly African-American student body, to the site of a former toxic waste dump.

TELC also received the Alliance for Affordable Energy’s inaugural Gary Grossen “Defender of the People” Award in November 2015 for helping champion affordable, sustainable energy in Louisiana.

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A Tulane Environmental Law Clinic faculty/staff photo: Clinical Instructor Elizabeth Calderon (L ‘98), Linda Swanner, Director Adam Babich, Clinical Instructors Corinne Van Daire and Machelle Lee Hall (L ‘08) and Deputy Director Lisa Jordan (LLM ‘09). Not pictured: May Nguyen.

Maritime and Environment at Rhodes: Fusing the Fields

Tulane’s celebrated summer law program in maritime law on the island of Rhodes, Greece, has been strengthened by the addition in 2016 of three environmental courses: the Law of the Sea, Underwater Cultural Heritage and Marine Resources Beyond National Jurisdiction. These courses build on Marine Pollution and other law classes in New Orleans of mutual interest to admirals and greenies alike, and on collaboration in the annual Summit on Environmental Law & Policy.

In 2017, Rhodes will feature yet another addition treating environmental issues of the Mediterranean Sea and surrounding states.
Jennifer Bergeron and Andrew Houlin (both L'17) teamed up for a Bayou Sauvage National Wildlife Refuge tree planting.

An October outing to the Caernarvon Diversion Outfall area in Plaquemines Parish added 500 native-species trees, including red maple, cypress and black gum, to an upland conservation area adjacent to Big Mar Lake on the east bank of the Mississippi River. Students teamed with the Coalition to Restore Coastal Louisiana for the project, which was part of the group’s Coastal Forest Restoration initiative.

The remote site was accessed by airboats, then the team hauled all of the trees, tools and supplies on wetland sleds. The new trees will help increase soil retention, promote land-building in the area, increase storm surge retention and boost forest resiliency.

In November, society members planted bottomland hardwoods at the Bayou Sauvage National Wildlife Refuge, one of the last remaining marshes adjacent to Lakes Pontchartrain and Borgne. An important stopover along the Mississippi Flyway, the refuge meets the needs of approximately 340 bird species and many alligators. Most of the refuge is located inside hurricane protection levees built to protect New Orleans from storm surge and flooding.

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The planting was in partnership with Common Ground Relief Wetlands, which operates a state-licensed tree farm and plant nursery in New Orleans’ Lower Ninth Ward. The project was a component of the U.S. Fish and Wildlife Service’s Comprehensive Conservation Plan for the refuge. Restoring the hardwood ridge helps to ensure healthy habitat for migratory birds and improves land retention.

Members of the Tulane Environmental & Energy Law Society planted hundreds of trees in fall 2015 to shore up Louisiana wetlands.

SPREAD GREENERY

TEELS students DIG DEEP