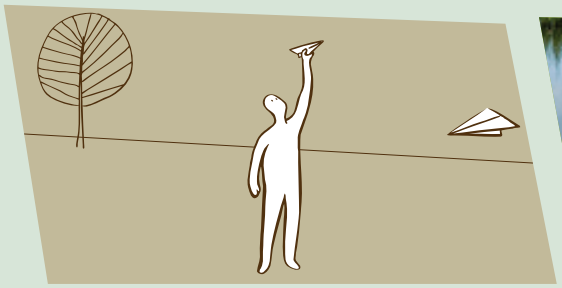
DUKE ENVIRONMENTAL LAW

Fall 2007



»INSIDE:

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DUKE LAW

Comments or questions?
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Duke launches interdisciplinary Environmental Law and Policy Clinic

THE LAW SCHOOL'S new Environmental Law and Policy Clinic welcomed its inaugural class with the start of the fall semester. A collaborative venture between the Law School and Duke's Nicholas School for the Environment and Earth Sciences, the clinic allows students from each school to work together to address complex issues of law and policy with tools and insights from an essential mix of disciplines: law, policy, and science.

"In the search for technological solutions to environmental problems, lawyers must be able to communicate with research scientists and engineers in meaningful ways," says Clinic Director Ryke Longest. "Our interdisciplinary approach will facilitate that communication and better inform the law with the science and the science with the law."

Having come to Duke after 14 years in the Environmental Division of the North Carolina Department of Justice, Longest says that he has long admired — and periodically relied upon — the unique blend of legal and scientific expertise among faculty at Duke.

"We have top-notch faculty and scholarship in environmental law — our faculty members literally wrote the textbooks," he says. "And in the Nicholas School, Duke has a wonderful set of experts in the environmental sciences. It is the perfect place to teach students how to harness that knowledge and understanding of the natural processes to help shape effective policy."

The clinic will work with a wide range of clients, including local, state, and national

Ryke Longest, director of the Environmental Law and Policy Clinic

Clinic

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nonprofit organizations with an environmental or conservation focus. Among other projects, students are currently working to develop new policy and legal tools to promote environmentally sustainable businesses in the state, and assisting the North Carolina Watershed Alliance, a coalition of nonprofit groups, on water quality issues.

"Sedimentation, largely caused by runoff from development, is the number one source of water pollution in the state," says Brian Buzby, executive director of the North Carolina Conservation Network, whose organization coordinates the Watershed Alliance. "The clinic offers much-needed assistance on issues arising from sediment handling and pollution." The Watershed Alliance recently identified a pressing need for increased legal capacity in the state to assist with enforcement of water quality laws, so the launch of the clinic is particularly timely, Buzby adds.

I SIGNED UP FOR THE CLINIC FOR ITS BLEND OF PRACTICAL AND SUBSTANTIVE EXPERIENCE – THE OPPORTUNITY TO INTERACT WITH REAL CLIENTS AND WORK ON TIMELY AND PRESSING ENVIRONMENTAL ISSUES. IT WILL HELP ME PREPARE FOR A FUTURE CAREER IN ENVIRONMENTAL LAW.
– SEAN ROBERTS '08

Complex issues of environmental law and policy generally involve multiple stakeholders and take years to resolve, Longest says, adding that each stage of that process offers valuable opportunities for students to master essential skills such as interviewing and counseling clients, policy analysis, and legal research, writing, and drafting.

James Salzman, Samuel F. Mordecai Professor of Law and Nicholas Institute Professor of Environmental Policy, serves as faculty adviser to the clinic and headed the yearlong, national search for its director. He lauds Longest's willingness to mentor young lawyers as well as his depth of experience in environmental law and policy.

"One thing that impressed me was the number of stories I heard of young attorneys he had mentored with whom he had no formal relationship — he just thought it was important to be a mentor," Salzman says. "He has a great reputation and amazing connections in the legal and environmental community. He really is a natural fit for this position."

At the state Department of Justice, Longest served as lead counsel to state environmental agencies, boards, and commissions, litigating cases before administrative agencies and all levels of state and federal courts. He also drafted laws and regulations and advised agencies on rule-making.

Michelle Nowlin JD/MA '92, a senior attorney with the Southern Environmental Law Center, who says Longest has been her "go-to" person for administrative law questions for more than a decade, calls him an excellent choice for clinic director. "He is a gifted attorney with a strong passion for environmental issues. I have always counted on him for direction if I was encountering a new area of environmental law."

John Adams '62, founding director of the Natural Resources Defense Council and Open Space Institute and chair of the clinic's advisory board, hopes the clinic will provide fresh leadership in the growing field of environmental law.

"The clinic represents a fabulous opportunity for training and will help create the new leadership that is going to be needed on these issues," says Adams.

DUKE ENVIRONMENTAL LAW & POLICY FORUM

Nov. 16 2007

Save the Date

***DELPF's* 2007 symposium: "A Charged Atmosphere: The Future of U.S. Policy on Global Warming"**

Law School's new dean brings unique perspective to environmental issues

"BIG ROBES TO FILL" was the headline on a Jan. 12 editorial in *The Sacramento Bee,* reacting to the news that David F. Levi, then chief U.S. district judge for the Eastern District of California, planned to leave his post to become dean of Duke Law School. Indeed, Levi's 17-year record as a federal judge, earlier service as the U.S. attorney for the Eastern District of California, and contributions to law reform garnered widespread praise as he left the bench and began at Duke July 1.

At a tribute dinner in Sacramento, Mary M. Schroeder, chief judge of the Ninth U.S. Circuit Court of Appeals called his experience "virtually unmatched in academia." In a written tribute, John Roberts, chief justice of the United States, praised Levi's leadership as chair of the Judicial Conference Committee on the Rules of Practice and Procedure, which oversees all federal rulemaking, and for service on other panels.

The Sacramento Bee chose to spotlight Levi's environmental record, calling him "not only a fine judge but also an important de facto land-use planner," for his district — making specific reference to his management of a series of cases in which he balanced Sacramento's development plans in its Natomas basin area with the need to preserve habitat for endangered garter snakes and Swainson hawks. The piece lauded Levi's "intelligent, consistent interpretation" of the federal Endangered Species Act, demand for funds and new plans for habitat preservation, and challenge to the government's approval of significant growth in the area.

Environmental issues regularly appeared on Levi's courtroom docket, as his district included California's fertile Central Valley, some of its fastest-growing cities, and such federal land treasures as Yosemite National Park. "Like other civil cases, the parties in many environmental cases often are not seeking a finding of right or wrong, or of liability or no liability," he observes. "Rather they are seeking a way of going forward with a clean-up or a development that the various interests can live with."


Dean David F. Levi

This is particularly true given the historical underpinnings of many environmental cases, adds Levi. "The environmental laws often impose heavy burdens on current landowners, even when the pollution was the result of activity by others many years earlier who are no longer solvent or no longer exist. Responsibility must now be borne by parties none of whom caused or benefited from the pollution."

One such case involved the clean-up of a "superfund" site, a derelict 19th-century open-pit copper mine that is, thanks to its acid-mine drainage, the biggest source of pollution in the Sacramento River and the San Francisco Bay. "The parties were dealing with a legacy of rapid industrialization and intense industrial activity which took place under a much looser regulatory scheme in the 19th century," Levi says.

His marriage to Nancy Ranney, a land-use planner who owns and manages a New Mexico cattle ranch, offers Levi a unique perspective on land management. He speaks of her commitment to raising grass-fed beef and selling it directly to consumers with obvious pride. "She is one of the leaders of a new food movement in which people want to know exactly where their food is coming from and how it has been produced. Because of her background in landscape architecture, she also knows that if the wide-open spaces in the West are to be preserved and not all developed, it will be because people like her are continuing to work their lands in responsible, sustainable ways."

With a vision for the Law School focused on building bridges between the academy and the profession, applying scholarship to real-world problems, and public service, Levi is delighted with the launch of the Environmental Law and Policy Clinic at the beginning of his tenure as dean.

"The clinic gives our students the unique opportunity to put their legal training into action with fellow students from the Nicholas School who can provide the expert knowledge needed in fields such as hydrology and toxicology," he says. "This will be wonderful preparation for lawyering, whether our students end up defending, prosecuting, legislating, or advocating."

Ecosystem services markets take off

IN HIS 2006 article, "Field of Green? The Past and Future of Ecosystem Services," Jim Salzman laid out the case he and others have been building since 1997: that wild lands, forests, and waterways provide essential and economically valuable services that sustain life — water purification, biodiversity, carbon sequestration, and flood control, to name just a few.

Having written the piece shortly after floodwaters devastated New Orleans in the wake of Hurricane Katrina, Salzman offered the tragedy as a clear illustration of natural assets' value beyond development.

"For years, the wetlands around New Orleans were destroyed to lay pipes and for development, for the most part without a second thought. As real estate, swamp and marsh have minimal value," says Salzman, the Samuel F. Mordecai Professor of Law and Nicholas Institute Professor of Environmental Policy. "But when you factor in the value of the service of storm buffering, the value of that service becomes clear. It was storm surge, not rains, that devastated New Orleans, and there is no question they would have been buffered by wetlands."

Salzman argued in his article that farmers and other stewards of the land should be properly compensated for providing these services through an "explicit arrangement" of payments. Farmers who manage their land through streamside vegetation, for example, should be paid to "grow the crop of water quality," just as others are paid to grow corn. "Put another way," he wrote, "why not treat farmers' provision of ecosystem services as no different from their provision of other marketable goods?"

That idea has, in fact, caught on with policy makers. The Bush administration's 2007 Farm Bill, currently before Congress, pledges $50 million to spur the development of ecosystem services markets by establishing a monetary value for agriculture and forestry conservation practices. The bill anticipates paying producers for conservation credits, which could then be sold to further environmental goals such as endangered species protection.

The bill's proposal to establish institutions that would facilitate ecosystem services transactions between private actors, such as credit registries and audit procedures, is unique, Salzman says, and a heartening example of how the idea of service payments has moved into mainstream policy debates. Having studied a wide range of such markets all over the world, he observes that many involve some type of government funding. Salzman and his colleagues at "The Katoomba Group," a world-wide, nonprofit network of market makers, are helping stimulate private enterprise with the online "Ecosystem Marketplace," now in its third year of operation at ecosystemmarketplace.com.

"One of the fundamental barriers to market creation is information flow," says Salzman. "Buyers and sellers need to know about each other quickly and at low cost." The Ecosystem Marketplace offers an up-to-date repository of articles and policy papers and, most importantly, an ecosystem services "ticker" that tracks service sales around the globe. "Our ambition is to make the Marketplace the 'Bloomberg' for ecosystem services."

Having spent a decade writing about the theoretical basis for these markets, Salzman is now turning his attention to designing the actual rules, laws, and policy tools that make it work, such as the design of water utility rates that take into account the value of lands that do not produce conventional income. He also has been working with officials at the U.S. Forest Service, who see potential in ecosystem services markets as a way to make up for the decline of timber production in national forests.

"It's been amazing to watch the rise of this idea of ecosystem services markets," says Salzman, who spent late May touting the concept to Brazilian magistrates, prosecutors, and gatherings of international environmental scholars on a speaking tour organized by the U.S. State Department.

Salzman is quick to credit the contributions of academics around the country with whom he has collaborated on the issue of ecosystem services markets, such as Gretchen Daily at Stanford, who introduced him to the concept from an ecological perspective, and law professors Buzz Thompson at Stanford and J.B. Ruhl at Florida State. He is particularly excited by the level of research at Duke across the entire campus.

"Ecosystem services markets are wonderfully interdisciplinary," Salzman says. "Ecology, law, economics, business — these all come into play in designing and making markets that allow nature to pay its way. A decade ago, none of us really thought this curious idea would be taken up by so many others in government, nonprofits, business, and academia. Ironically, my concern now is that people may think too much of service markets. There's a real danger of unrealistic expectations — because service markets will not work in all settings — but hopefully our research will provide a solid grounding for when, how, and where service markets make sense."

A Field of Green? The Past and Future of Ecosystem Services, 21 *Journal of Land Use and Environmental Law* 133-151 (2006), was reprinted as one of the best environmental law articles in 2006, in *Land Use and Environmental Law Review.*

Faculty Environmental Scholarship and Activities 2007

Jedediah Purdy

People as Resources: Recruitment and Reciprocity in the Freedom-Promoting Approach to Property, 56 Duke Law Journal 1047-1117 (2007)

Property and Empire: The Law of Imperialism in Johnson v. M'Intosh, 75 George Washington Law Review 329-371 (2007)

Visiting assistant professor, Harvard Law School, Spring 2007

Fellow, Safra Center for Ethics, Kennedy School of Government, Harvard University, 2006-07

Presenter, "American Freedoms: Presentation of a Manuscript in Progress," New America Foundation, January 2007

Presenter, "Property and Empire: Rereading Johnson v. M'intosh," Harvard Law School History Colloquium, April 2007

Presenter, "Some Chords of Freedom," Conference on "Law and Democracy in the Empire of Force," University of Michigan Law School, April 2007

Presenter, "Contexts, Choices, and Values: Freedom and Institutional Design," UC Hastings Law School, April 2007

James Salzman

Concepts And Insights In Environmental Law (2d ed., Foundation Press, 2007) (with Barton Thompson, Jr.)

Negligence in the Air: The Duty of Care in Climate Change Litigation, 156 University of Pennsylvania Law Review 101-154 (2007) (with David Hunter)

The Practice and Policy of Environmental Law (Foundation Press, 2007) (with J.B. Ruhl & John Nagle)

Food and Agriculture Organization of the United Nations, The State of Food and Agriculture 2006 (contributing author)

Population Growth and Sustainability, in John Dernbach, ed., Still Stumbling Toward Sustainability (co-author with Anne Ehrlich, 2007)

Ecosystem Services and the Public Trust Doctrine: Working Change From Within, Southeastern Envt'l. L. J. (forthcoming, with J.B. Ruhl)

The Law and Policy Beginnings of Ecosystem Services, Journal Of Land Use & Environmental Law (forthcoming, with J.B. Ruhl)

A Field of Green? The Past and Future of Ecosystem Services, 21 Journal Of Land Use & Environmental Law 133 (2006)

Reprinted as one of best environmental law articles in 2006 in Land Use & Environmental Law Review (2007)

Honored as "Professor of the Year 2006-07" for classes over 30 students by students at Nicholas School of the Environment and Earth Sciences

Awarded Samuel F. Mordecai Professorship, July 2007

Appointed as member, Board of Advisors, Bren School of Environmental Science and Management, University of California at Santa Barbara

Keynote speaker, "How to Think About Ecosystem Services," Texas Forest Service conference, Houston, March 2007

Presenter, "Thirst: A Short History of Drinking Water," faculty workshop, University of Minnesota, Minneapolis, April 2007

Presenter, "The Law and Policy of Ecosystem Services," School for Prosecutors, Porto Alegre; School for Magistrates, Porto Alegre; Conference on the Environmental State, Porto Alegre; and Conference on Lawyers for a Green Planet, Sao Paolo; "Climate Change Litigation," School for Prosecutors, Porto Alegre and Curitiba; U.S. State Department speaking tour, Brazil, May 2007

Christopher Schroeder

Panelist, William and Mary Bill of Rights Institute Symposium on Presidential Signing Statements, February 2007

Panelist, Duke Program in Public Law Symposium on the Military Commissions Act, February 2007

Panelist, "*Kelo v. New London*," Duke Program in Public Law Symposium, February 2007

Speaker, Symposium on Drug Discovery, Development and Translation, Institute of Medicine, March 2007

Speaker, Global Climate Change: National Security Implications, Triangle Institute for Strategic Studies, Chapel Hill, March 2007

Speaker, "President Truman and the Administrative Procedure Act," annual Truman Conference, this year on President Truman and the Environment, at the Truman Library, Key West, Florida, June 2007

Laura Underkuffler

Human Genetics Studies: The Case for Group Rights, 35 Journal of Law Medicine & Ethics 383-395 (2007)

Jonathan Wiener

Precaution, in Oxford Handbook of International Environmental Law 597-612 (Daniel Bodansky, Jutta Brunnee & Ellen Hey eds., 2007)

Think Globally, Act Globally: The Limits of Local Climate Policies, 155 University of Pennsylvania Law Review 101-119 (2007)

Incentives and Meta-Architectures: Comments on Jeffrey Frankel, in Architectures for Agreement: Addressing Global Climate Change in the Post-Kyoto World ch. 2.2 (Robert N. Stavins & Joseph E. Aldy eds., Cambridge University Press, 2007)

Speaker, "Comparing Risk Regulation in the U.S. and Europe," Georgetown University Law School, September 2007

Co-organizer and speaker, conference on Climate and Development in the Changing World Order, Paris, Oct. 2007

President elect, Society for Risk Analysis

Visiting professor, University of Chicago Law School, Spring 2007

Sustainability at Duke

LAW SCHOOL GETS LEED CERTIFICATION

Duke Law School is one of five Duke buildings to get LEED certification from the U.S. Green Building Council.

LEED stands for Leadership in Energy and Environmental Design, a national standard that assesses the energy-saving aspects of building design, construction, and operation. The U.S. Green Building Council is a nonprofit group of building industry leaders. According to the

council's web site, to earn LEED certification, a building project must earn "credits" through meeting building performance benchmarks in five areas: sustainable site development, water savings, energy efficiency, materials selection, and indoor environmental quality.

"Taking the steps necessary to pursue LEED certification was important to the Law School," says Professor Thomas Metzloff who is overseeing the School's various construction projects. "Many of the steps needed to qualify not only are good for the environment but also make good common sense and make for a better building. We are also pursuing LEED certification for the new atrium addition, the Star Commons."

DUKE UNIVERSITY SIGNS CLIMATE COMMITMENT

As part of Duke's continued leadership in environmental stewardship and sustainability, President Richard Brodhead has signed the American College and University Presidents' Climate Commitment.

"Duke was built on a culture of public engagement and the belief that we have the duty to share the knowledge of our faculty and students to address pressing global issues," Brodhead said in his announcement on July 27. "Tackling the complex problem of climate change here on our campus not only benefits this institution but society as a whole."

By signing the commitment, Duke is pledging to eliminate the campus's greenhouse gas emissions over time. This involves:

- completing an emissions inventory;
- within two years, setting a target date and interim milestones for becoming climate neutral;
- taking immediate steps to reduce greenhouse gas emissions by choosing from a list of short-term actions;
- integrating sustainability into the curriculum and the overall educational experience for undergraduate and graduate and professional students; and
- making the action plan, inventory, and progress reports publicly available.

"Duke has already completed many of the objectives that are part of the commitment," says Tavey McDaniel Capps, Duke's environmental sustainability coordinator. "We have conducted a greenhouse gas inventory, and adopted a LEED building policy and an Energy Star policy. There are many departments and individuals across campus working on this issue. It just makes sense to sign on to this national effort and bring these pieces together into a cohesive plan to reduce Duke's overall footprint."

Over the next two years, campus stakeholders will work together to set targets, strategies and timetables to achieve this initiative. This project will touch many elements of the campus that significantly affect Duke's ecological footprint, including transportation, energy use, and campus fuels, waste reduction, and individual behavior.

"This is a significant commitment, and it will take the efforts of the entire campus community to make it a reality," Capps said.

In signing the commitment, Duke joins more than 300 other colleges and universities across the U.S. to focus the research and leadership of higher education on the pressing issue of global climate change.

DUKE SELECTED AS ONE OF THE 50 GREENEST U.S. SCHOOLS

Kiwi Magazine has selected Duke as one of the 50 "greenest" colleges and universities in the country. The list is published in its September/October 2007 issue. Duke won praise for its campus bike repair days, LEED building policy, green power purchasing, student activities such as the "Eco-Olympics" (described as a dorm-versus-dorm energy, waste, and water reduction competition), and the educational opportunities offered through the Nicholas School for the Environment and Earth Sciences.

LAW SCHOOL "GARBOLOGY" STUDY

In April 2007 student members of Duke's Environmental Law Society (ELS) spearheaded an analysis of the Law School's trash. According to Marjorie Mulhall '08, in a single day the Law School generated 603 lbs. of trash, nearly one-third of which, by weight, consisted of recyclables. "We're likely generating more than one-and-a-half tons of garbage in a single work week in the building," Mulhall observed in the Law School's daily online bulletin, adding an exhortation to all members of the community to recycle.

News from the Nicholas Institute for Environmental Policy Solutions

NICHOLAS INSTITUTE FOR ENVIRONMENTAL POLICY SOLUTIONS
DUKE UNIVERSITY

NICHOLAS INSTITUTE HELPS TO SHAPE SENATORS' ECONOMIC RELIEF PLAN FOR U.S. CARBON MARKETS

A bipartisan group of U.S. Senators considered critical to the passage of legislation to limit U.S. greenhouse gas emissions introduced a proposal to reduce costs and provide oversight to the new emissions permit trading market in late July. The plan was developed jointly with Duke's Nicholas Institute for Environmental Policy Solutions.

Senators Mary Landrieu (D-La.), Lindsey Graham (R-S.C.), Blanche Lincoln (D-Ark.) and John Warner (R-Va.) introduced a bill to minimize any negative economic impacts to consumers and industry of the transition to a lower-carbon economy, while achieving critical environmental goals. The bill is designed to be incorporated into broader climate change legislation.

Nicholas Institute Director Tim Profeta JD/MEM '97 testified on the proposal at a hearing of the Senate Subcommittee on Global Warming and Wildlife, co-chaired by Warner and Sen. Joseph Lieberman (I-Conn.) on July 24.

Concerns about containing costs have been a stumbling block for the passage of legislation to reduce U.S. greenhouse gas emissions. The new proposal focuses on providing the market with flexibility to help reduce costs. It offers two measures to relieve excessively high costs that would indicate a scarcity of low-carbon options.

The first measure would be to expand companies' ability to borrow permits against future year reductions.

The second measure, to be used if high prices are not relieved by the first measure, would add a slightly larger number of permits to the market. This temporary increase would be compensated for by reducing available permits in a later year, when more options have been developed.

The measures would be implemented by a Carbon Market Efficiency Board, which would oversee what is estimated to be a multi-billion dollar emissions trading market. The board would operate much like the Federal Reserve Board, providing information on price and low-emission technology investment trends to Congress and the public, and it would employ cost-relief measures when a market correction is needed.

"If we are going to succeed with reducing U.S. greenhouse gas emissions, we have to understand the major economic responsibility and opportunity we have here," said Profeta. "This proposal aids the economy while securing the environmental goal, which in turn provides certainty for investment in low-carbon solutions."

Warner recently announced that he and Lieberman would begin drafting legislation drawing on other bills. The two are likely to include this proposal as a part of that legislation.

Landrieu, Graham, Lincoln and Warner all voted in favor of the 2005 Sense of the Senate resolution recommending mandatory limits on greenhouse gas emissions. That resolution required any climate change legislation to avoid "significant harm" to the economy.

A Nicholas Institute white paper describing the proposal is available at www.nicholas.duke.edu/institute/climatechangeeconomicprotection

REPORT RECOMMENDS STRATEGIES FOR MORE EFFICIENT WATER USE IN NORTH CAROLINA

At a time when all 100 counties in North Carolina are experiencing some degree of drought, a recent report from the Nicholas Institute identifies six long-term strategies for improving the management and conservation of water resources in the Tarheel State.

The report, "The Future of Water in North Carolina: Strategies for Sustaining Abundant and Clean Water," is available online at www.nicholas.duke.edu/institute/waterreport.

The report includes recommendations by national and state experts who took part in a Nicholas Institute conference on North Carolina water management earlier this year. Two of the recommendations are particularly relevant for dealing with drought, observed Bill Holman, senior visiting fellow at the Nicholas Institute, and one of the report's authors.

"Registration, measurement, and regular reporting of water use are essential to sustainable management of our water resources, especially during dry times. We need to do much better at this," he said.

The state has begun to require most major water users such as cities, large industries and power companies to register and report how much surface water and groundwater they are using. This information should then be compiled into easily accessible formats and reported regularly to the legislature and the public, Holman said. Some major users, such as agriculture and community water systems, do not have to report their use to the Division of Water Resources, he noted.

The report also recommends that the state commission a study to evaluate the water- and cost-savings that could be achieved through measures such as changing the state's building codes to require greater efficiency for water-using appliances and fixtures; using new metering technologies that would allow utilities to charge separate rates for indoor water use or irrigation; and trying seasonal pricing incentives that would encourage greater conservation during periods of high demand or low supply, with sensitivity to low-income households.

Other recommendations of the report include:

- integrating policies and programs governing land use with those governing water use since the two are so closely related;
- giving greater protection to the state's green infrastructure — the forests, farms, wetlands and other natural areas that help protect water resources and play a vital economic and ecological role in the state's long-term prosperity;
- investigating greater use of nutrient trading programs and other market-based approaches to conservation; and
- begin preparing now to address the impact climate change will have on the state's water resources for years to come.

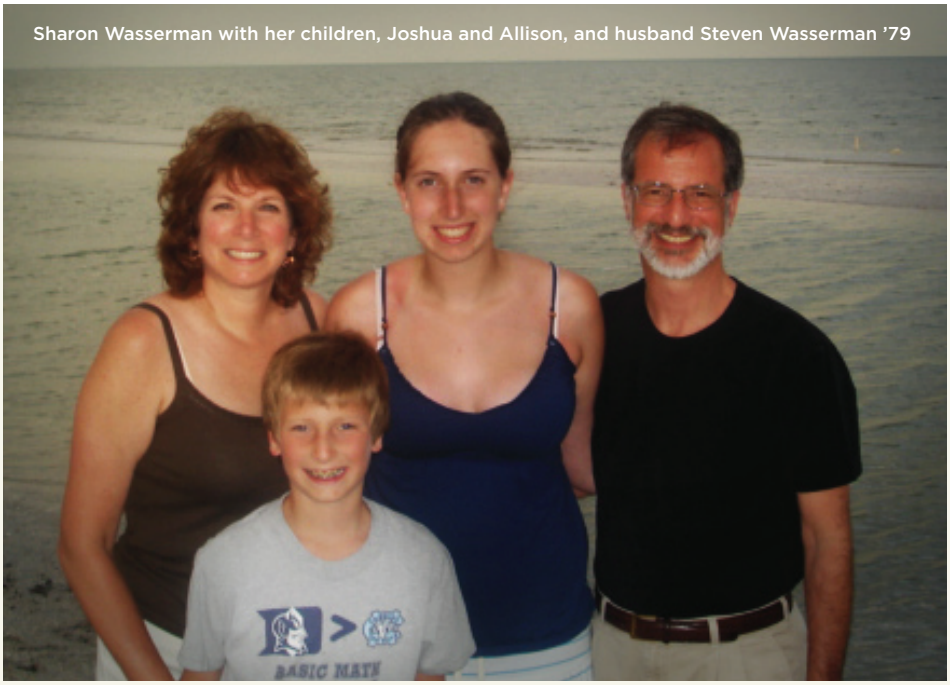
"Tougher water restrictions may help in the short run but they don't address the larger, long-term problem," Holman said.

The Nicholas Institute, in partnership with other universities and stakeholders, plans to work with state regulators and the General Assembly on initiatives that include developing a new framework for managing water resources, increasing the protection of the state's drinking water supplies, and assessing the potential for ecosystem markets at the watershed scale, he said.

FOR MORE INFORMATION, VISIT WWW.NICHOLAS.DUKE.EDU/INSTITUTE/

Alumni Profile

Sharon Wasserman
'81


Sharon Wasserman with her children, Joshua and Allison, and husband Steven Wasserman '79

EIGHT YEARS after leaving a partnership at a boutique Bay Area real estate law firm in order to raise her children, Sharon Wasserman wasn't seriously looking for a job in the summer of 2005 when she spotted an intriguing opportunity on Craigslist. Two weeks later she was again practicing real estate law, but with a very different focus from the commercial acquisitions and leasing on behalf of "big office building landlords" and banks she had made her specialty during 18 years of law firm practice.

Working for The Nature Conservancy in California, Wasserman applies her expertise to acquire properties for conservation. "But it's still real estate law — lots of drafting, closing transactions, and title work," she says. Now the managing attorney for the Conservancy's California operations, she also oversees the organization's legal team in the state and takes part in its overall strategic planning.

Wasserman explains that Conservancy scientists have mapped California's plants and wildlife and prioritized sensitive areas — wildlife corridors or riparian buffers, for example — that need protection. Once identified, the Conservancy looks for a solution that results in long-term conservation and works for local communities. That might mean the Conservancy will partner with a public agency to create a new park or refuge, or it might mean that the Conservancy will work with private landowners to create conservation easements that retire development rights in perpetuity and set up sustainable management practices for their properties.

Part of finding locally-tailored solutions means the Conservancy makes sure that local stewards are included in the deals, Wasserman adds, as they did with one recent acquisition, on behalf of the California Wildlife Conservation Board, of several miles along eastern California's Truckee River from a power utility. "Local control — here the Truckee-Donner Land Trust — is always better than management from San Francisco or D.C.," Wasserman says. "This extended a river restoration by our Nevada group into California, and protects several miles of river and uplands forever."

A Conservancy purchase is usually complex and generally involves numerous parties, as the organization seeks to maximize conservation results by combining federal or state funds with the money it raises from private supporters, Wasserman explains. And given that many projects involve multiple tracts that cross state lines, or properties that have been held and worked by extended families for generations, the transactions Wasserman handles can take years to complete.

"Every deal I've worked on here has been complicated," she says. "With family-held properties, such as landscape-sized ranches, our project managers may have touched base with the sellers 105 times in five years, and all of a sudden, during that 105th meeting, the sellers say, 'We're ready,' and it has to close quickly. And we are usually trying to 'bungee-cord' the deals together with six sources of funds on the buyers' side." Wasserman says she prefers to be involved with the Conservancy project team handling specific acquisitions at the outset of negotiations so she can help structure the deals so they "sail through" the Conservancy's rigorous board approval processes.

In the end, though, the sellers "are always happy" when the deals close, she says. "I went out to one beautiful hilltop ranch overlooking the Carmel Valley. As we looked across the valley, the landowner, a man of about 50, said, 'my grandfather brought me up here when I was 7 years old and it looks exactly the same. That's why we're doing this [deal] with you — so I can bring my grandson out and it will look the same.'"

Wasserman, who served as president of the San Francisco Rent Stabilization Board during her "interim down period" when she was away from practice, counts herself extremely fortunate with her career comeback.

"I loved this from the minute I walked in," Wasserman says of working for an organization she and her husband, Steven Wasserman '79, had supported as donors for years. "It's terrific to get up in the morning and know you are going to do something great. My children are thrilled — they say 'Mom's going off to save the world.' I never felt like I was wearing a black hat when I was doing real estate deals for commercial landlords and developers, but I never felt like this."

Alumni Profile

Margaret Spring
'92

MARGARET SPRING is astonished when she hears that her marriage was announced on the floor of the U.S. Senate. On May 11, her former boss, Sen. Daniel Inouye (D-Hawaii), rose to pay tribute to Spring who, he said, was "leaving the Senate for love."

He went on to lavishly praise her eight-year record of accomplishment on the Commerce, Science, and Transportation Committee, which he chairs. He listed as highlights the enactment into law of more than 10 major ocean and coastal initiatives in which she had a lead role, such as the Oceans and Human Health Act, the Tsunami Preparedness Act, the Oceans Act of 2000, the Marine Debris Research, Prevention, and Reduction Act, and the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

"What is clear from the passage of all these bills is both Margaret's ability to successfully negotiate and work in a bipartisan fashion, regardless of whether she was in the minority or the majority, and her unwavering commitment to making the world a better place for today and for the future," Inouye said. "The hallmark of Margaret's legacy will be a cleaner and healthier environment for generations to come."

Now director of the California Coastal and Marine Program for The Nature Conservancy, Spring returns the compliments, crediting the commitment to action and close friendship shared by Inouye and vice-chairman Sen. Ted Stevens (R-Alaska) for the bipartisan atmosphere on the Committee. She adds she found the same spirit on the committee staff of Sen. Fritz Hollings (D-S.C.), which she joined in 1999, after seven years of environmental law practice at Sidley Austin in Washington, D.C. "[That spirit] is essential to build effective legislation," says Spring. "Traditionally, ocean and coastal topics have not been treated as Republican or Democratic issues, but as regional issues. There can be a surprising amount of agreement on both sides of the aisle regarding certain goals. How you get there was always the question."

Spring is particularly proud of the negotiation and passage of the 2006 reauthorization of the Magnuson-Stevens Act. The statute, first passed in 1976 and extensively amended in 1996, establishes a framework for regulating the management of U.S. fisheries out to the 200-mile fishing limit, with goals that include limiting harvest, protecting habitat, and developing scientific assessments of fish stocks, she explains.

In addition to comprehensively targeting international overfishing and bycatch problems, the 2006 amendments to the law sought to ensure that conservation goals added in 1996 were "real and enforceable, and flexible enough to deal with regional differences," Spring says. She and her colleagues had to balance the needs of the various stakeholders in the regions, in science, and in industry, she adds. "If you understand what motivates different groups, you can find a place to have a conversation. And you have to demonstrate that you are hearing them."

Spring anticipates that her new position at The Nature Conservancy in Monterey will both build on and benefit from the skills she developed in the Senate.

"The Conservancy also operates by trying to come to consensus with different groups working in collaboration," she observes, adding that she relishes the opportunity to see how policy works in practice. "Our primary tool [at the Conservancy] is ecological assessment — regional and statewide assessments of threats and species status, working from a science base. It really helps ground you, not in the 'policy world' of memos and reports, but in the real world."

One project Spring has taken over is the Central Coast Groundfish Project, which involved the purchase of federal groundfish trawl permits and collaborative work with Central Coast fishermen that resulted in establishment of no-trawl zones in 2006. As the project moves forward, the Conservancy is partnering with local fishermen on projects designed to promote a long-term sustainable fishery for the region, for example by switching to gear with less bycatch and habitat impacts. It is another opportunity to pursue compromise and the goal of sustainability.

"We aren't seeking closure [of the fishery], but to see whether we can facilitatate adoption of sustainable practices that help conserve the resource and ensure long-term viability of the fishery and associated businesses," Spring says. This approach reflects ideas developed in the Magnuson-Stevens Act, she adds, making it another opportunity to see policy in action.

A New York City native, Spring traces her interest in ocean and coastal environments to family escapes — swimming and diving in Long Island, and haunting the docks in New England fishing villages. Working for two years after college at a Florida marine lab showed her that she "wasn't cut out to be a scientist," but her continuing interest in marine policy led her to law school.

While at Duke, Spring co-founded the *Duke Environmental Law and Policy Forum* and worked on wetland issues as an intern at the Southern Environmental Law Center. She spent her third year in Washington, D.C., on an externship, Duke's first, to the Center for International Environmental Law (then headed by Durwood Zaelke '72). It was during that same year that she forged connections through her work as a fellow on the Senate Commerce Committee's National Ocean Policy Study to Sen. Hollings and members of his staff. Those connections eventually took her to back to Capitol Hill.

Asked what advice she might give to a student with similarly strong interests, Spring says, "Don't be afraid to take a risk. Try to cultivate personal interests in the 'space' you have." She clearly has taken her own advice.

Student Profile

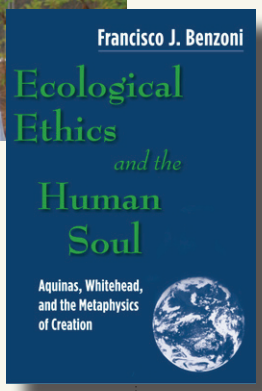
Francisco Benzoni
'08

AS A LAW STUDENT, 3L Francisco Benzoni is helping to shape scholarship in environmental law and policy as managing editor of the *Duke Environmental Law and Policy Forum*. As the author of *Ecological Ethics and the Human Soul*, forthcoming in January from Notre Dame University Press, Benzoni brings his own scholarly voice to a fundamental moral debate: the relationship of human beings to the rest of creation.

Benzoni, who earned a PhD in ethics at the University of Chicago and teaches business ethics at Duke's Fuqua School of Business, argues in his new book that the metaphysics of Thomas Aquinas, which posits a moral separation between humans and other creatures, is philosophically untenable and ethically destructive.

"In Aquinas' understanding of goodness and being, [non-human creatures'] purpose is to serve the human good, and once they have done so, they have no more use," he says. "Those who think they can use Aquinas for a non-anthropocentric ecological ethic are mistaken, because this separation of human beings from the rest of creation ends with the 'instrumentalization' of the rest of creation."

By contrast, Benzoni argues that a morally sound ecological ethic can be grounded in the metaphysics of 20th-century mathematician and philosopher Alfred North Whitehead. While human beings are the most complex part of nature "because of our greatly enhanced ability to integrate the data of experience," Benzoni explains, Whitehead finds no "difference in kind" between human beings and other creatures. "Every entity, here and now, contributes to the richness of God's experience. In our lives, always, we contribute to the greater whole, with the goal being to do what one can in any situation to maximize the [possibilities for ever richer] expressions of creativity.



"So our moral obligation is to do what we can to make the world a better place," Benzoni adds. "The well-being of other creatures is part of our moral obligation and must always be taken into account. This should shift, significantly, the way we live our lives."

In fact, this understanding of reality creates a moral imperative to live in an ecologically sensitive manner, with humans attempting, in a sense, to mimic nature, he says. "We should seek to mimic the efficiency and circularity of the natural system, because that's how we decrease our impact and allow other creatures the space that they need to thrive — not just the literal space, but a decrease in pollutants [and other hazards]." Even social systems should be well-integrated into natural systems, he says. "We need to maximize the potential for human creativity within this continual striving for [ecological] efficiency."

Benzoni's interest in the mix of ethics and environment was first sparked by an undergraduate course at Cornell, where he earned a degree in engineering. It was cemented when he taught for two years in Lesotho as a Peace Corps volunteer, just as neighboring South Africa transitioned out of its apartheid regime, he says.

"Lesotho is a gorgeous, mountainous country that has experienced terrible land erosion due to poor land management practices," he says. "It's been deforested, and farmed destructively, with vegetation planted on steep hillsides, so that rains create massive gullies after harvest. Ironically, all the rich land was washing down to the plains of South Africa."

Given Lesotho's economic dependence on South Africa, which surrounds it and where arable land historically was held by whites, Benzoni observed "an oppressive regime [was] intimately intertwined with environmental degradation. It really cemented my interest in social and environmental ethics, and how to articulate the proper relationship between human beings, and between human beings and the rest of creation." On his return from Lesotho, Benzoni began his graduate studies in ethics, with a specific focus on environmental ethics.

Why add a JD to his resume? "Law sort of takes me back to engineering. I really like application," Benzoni says. "One of my goals in going to law school was to see, more concretely, the effects of what I was doing. I like working on real problems." He has taken every opportunity to experience the practical side of law, and discovered a strong interest in litigation through 1L and 2L summers at two Raleigh law firms, an externship with Judge Allyson Duncan '75 of the U.S. Court of Appeals for the Fourth Circuit, and externships with the Wake County and Orange County (N.C.) District Attorneys' Offices.

"The thing that drives me is [the desire to] change the way that we interact and coordinate and set up communities," says Benzoni, who also is submissions editor for the *Duke Journal of Constitutional Law & Public Policy*. "The commitment to democracy is that we don't just say 'We'll do this ...' but that we [find ways to] live richly, while allowing others to live richly too."