Nos. 20-35721, 20-35727, and 20-35728
OPINION filed March 16, 2022 - Before: K. M. WARDLAW, E.D. MILLER, and B.S. BADE, Circuit Judges

---

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRIENDS OF ALASKA NATIONAL WILDLIFE REFUGES, et al.,
Plaintiffs-Appellees,

v.

DEBRA HAALAND, et al.,
Defendants-Appellants,

and

KING COVE CORPORATION, et al.,
Intervenor-Defendants/Appellants,

and

STATE OF ALASKA,
Intervenor-Defendant/Appellant.

On Appeal from the United States District Court
for the District of Alaska, Case No. 3:19-cv-00216 JWS

MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIIEF IN SUPPORT OF PLAINTIFFS-APPELLEES' PETITION FOR REHEARING EN BANC

Applicants, Natural Resources and Administrative Law Professors, move this Court, pursuant to Fed. R. App. P. 29(b) for an Order granting leave to file the

accompanying *Amicus Curiae* Brief in support of Plaintiffs-Appellees' Petition for Rehearing En Banc. In support of this motion, Applicants assert as follows:

1. Plaintiffs-Appellees and Defendant-Appellants have consented to the filing of this *amicus curiae* brief, Intervenor-Defendants have not taken a position.

2. *Amici curiae* are law professors with an interest in preserving the integrity of the Administrative Procedure Act (APA) and judicial review.

3. The Brief offered by Applicants provides perspectives from academia and practice related to the public's access to decision-making processes and judicial review of agency decisions under the APA. Applicants assert that judicial review is critical to the careful separation of powers balance that Congress sought to protect in the APA an to ensure that the public has a role in agency decisions that affect publicly owned property, such as the Izembek Wildlife Refuge.

WHEREFORE, Applicants request that this motion be granted, allowing the filing of their *Amicus Curiae* Brief in Support of Plaintiffs-Appellants' Petition for Rehearing En Banc.

Respectfully Submitted,

/s/ Gregor A. MacGregor
Faculty Fellow
University of Colorado Law School
2450 Kittredge Loop
Boulder, CO 80309
(303) 735-5880
Gregor.MacGregor@colorado.edu

Counsel for Amici
CO Bar No. 53900
Dated: May 4th, 2022

CERTIFICATE OF SERVICE

I certify that on May 4th, 2022, I electronically filed the foregoing with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system, which will send electronic notification of such filings to the attorneys of record in this case.

/s/ Gregor A. MacGregor
Faculty Fellow
University of Colorado Law School
2450 Kittredge Loop
Boulder, CO 80309
(303) 735-5880
Gregor.MacGregor@colorado.edu

Nos. 20-35721, 20-35727, and 20-35728
OPINION filed March 16, 2022 - Before: K. M. WARDLAW, E.D. MILLER, and B.S. BADE, Circuit Judges

---

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRIENDS OF ALASKA NATIONAL WILDLIFE REFUGES, et al.,
Plaintiffs-Appellees,
v.
DEBRA HAALAND, et al.,
Defendants-Appellants,
and
KING COVE CORPORATION, et al.,
Intervenor-Defendants/Appellants,
and
STATE OF ALASKA,
Intervenor-Defendant/Appellant.
On Appeal from the United States District Court
for the District of Alaska, Case No. 3:19-cv-00216 JWS

ADMINISTRATIVE AND NATURAL RESOURCES LAW PROFESSORS *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS-APPELLEES' PETITION FOR REHEARING EN BANC

Gregor A. MacGregor
Faculty Fellow
University of Colorado Law School
2450 Kittredge Loop Drive
Boulder, CO 80309
(303) 735-5880
Gregor.MacGregor@colorado.edu

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

IDENTITY AND INTERESTS OF *AMICI* CURIAE[1]

Amici curiae are administrative and natural resources law professors with an interest in preserving the integrity of the Administrative Procedure Act (APA) and judicial review of agency actions, including reversals such as the one at issue in this appeal. Congress enacted the APA to ensure that the public would have access to agency decision-making processes; give affected parties the opportunity to seek judicial review of agency decisions; require reasoned and supported decisions; and require agencies to follow the procedures established by Congress. Judicial review is critical to the careful separation of powers balance that Congress sought to protect in the APA and to ensure that the public has a role in agency decisions that affect lands and resources Congress has set aside for the benefit of future generations, such as the Izembek Wildlife Refuge.

[1] Amici state that no party or party's counsel authored this brief in whole or in part, and no party or entity of than *amici* and its counsel contributed money intended to fund preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Department of the Interior, under Secretary Jewell in 2013, declined to execute a land exchange and allow a road to be built through the Izembek National Wildlife Refuge based on contemporaneous scientific consideration and the Department's studies reaching back to the 1980s. In 2018, Secretary Zinke attempted to exchange lands with King Cove Corp. to allow for construction and operation of a road through Izembek, but the exchange was rejected by the District Court. In 2019 Secretary Bernhardt justified a land exchange agreement to authorize a road through the Izembek under new and unsupported factual claims under the guise of "rebalancing" environmental and socioeconomic values "even assuming all of the facts" as stated in 2013. A panel of this court accepted his claim at face value, a decision that exempts the Secretary's determination from review under the APA and circumvents the procedures prescribed by Congress in the Alaska National Interest Lands Conservation Act (ANILCA). As the dissent characterizes the majority opinion, it creates "magic words" that would allow any agency to reverse itself without explanation. Allowing this kind of exemption raises a question of exceptional importance concerning millions of acres of federal public lands in Alaska. En banc review is necessary to ensure consistency under Supreme Court and Ninth Circuit precedent regarding agency reversals and to hold agencies accountable to the procedural requirements set forth by Congress.

ARGUMENT

I. EN BANC REVIEW IS NECESSARY TO ENSURE CONSISTENCY WITH SUPREME COURT AND NINTH CIRCUIT DECISIONS REGARDING THE APA STANDARD FOR AGENCY POLICY REVERSALS.

A. The Majority Mischaracterizes the Requirements for an Agency to Reverse a Policy Position and Creates "Magic Words" to Exempt Decisions from APA Review.

The majority's disregard for the Secretary's factual findings, which contradict his own Department's findings reaching back to the 1980s, is a misapplication of administrative law in direct contravention with Supreme Court and Ninth Circuit decisions. The Supreme Court established a four factor test an agency must satisfy when it changes its position, the fourth of which is providing "good reasons for the new policy." *F.C.C. V. Fox Television Stations, Inc.* (*Fox*), 556 U.S. 502, 515-516 (2009); *see also Organized Vill. of Kake v. U.S. Dep' of Agric.* (*Kake*), 795 F.3d 956, 968 (9th Cir. 2015) (en banc) . While the majority opinion below in *Friends of Alaska National Wildlife Refuges v. Haaland,* 29 F.4th 432 (9th Cir. 2022) [hereinafter Op.] is concerned with the clarity and genuineness of the Secretary's justifications and characterizes his factual findings as "beyond the point," Op. at 17, 20-21, new policy that "rests on factual findings that contradict those which underlay its prior policy" requires a "reasoned explanation… for disregarding facts and circumstances" underlying the previous

policy. *Fox*, 556 U.S. at 516; *see also Kake*, 795 F.3d at 968. Secretary Bernhardt's memorandum fails to provide such a reasoned explanation.

The majority's decision nearly eliminates the requirement for federal agencies to provide adequate justification when making a decision that reverses prior agency policy. *Id*. Despite relying on contradictory factual findings, the Secretary's assertion that the policy reversal is an exercise of policy discretion he would exercise "even assuming all the facts as stated in the 2013 ROD" seems to satisfy the majority. This amounts, as the dissent argues, to a set of "magic words" for surviving APA review of a change in agency policy. Op. at 32. *Amici* assert that while the Secretary was entitled in 2019 to give more weight to socioeconomic concerns than his predecessor had in 2013, he was not entitled to discard prior factual findings without a reasoned explanation. *Kake*, 795 F.3d at 968.

Far from just abrogating the standards in *Fox*, the majority's opinion calls into question the line of administrative law jurisprudence requiring agencies to act consistently. Consistency doctrine, as it has been built upon *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983), allows policy shifts but only if agencies fully confront their earlier actions, past explanations, and the relevant facts and circumstances involved in past and proposed decisions. As succinctly stated by Professor William Buzbee, the cases do not "permit regulatory

shifts based on regulatory whim." *The Tethered President: Consistency and Contingency in Administrative Law*, 98 B.U.L. REV. 1357, 1396 (2018).

Rather than require the Secretary to fully confront his predecessor's reasoning and decision, the majority's opinion focuses on the flexibility afforded to agencies by *Fox*. However, *Fox* considered circumstances where significant factual determinations were not at issue. The type of profanity allowed on television, as contemplated in that case, is almost entirely a question of policy and values. It may be that such a rebalancing can occur precisely on the same record for questions of policy and values. Op. at 19. However, controlling precedent prescribes a different requirement when an agency purports to make a decision based on new facts or cannot provide a reasoned analysis linking its new decision to the facts as they exist. *State Farm*, 463 U.S. 29; *Fox*, 556 U.S 502.; *Encino Motorcars LLC v. Navarro*, 579 U.S. 211 (2016); *Kake*, 795 F.3d 956.

The change in course taken by Secretary Bernhardt requires more than awareness, it requires the Department to "supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance." *State Farm* 463 U.S. at 42. As with any other agency decision, such an explanation of a reversal must include a "rational connection between the facts found and choices made" *Id*. citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962). When new policy "rests on factual findings that

contradict those which underlay its prior policy" as it does here, the agency must provide a "reasoned explanation… for disregarding facts and circumstances that underlay" the previous policy. *Fox*, 556 U.S. at 516. Failing to do so creates unexplained inconsistencies that render an agency decision arbitrary and capricious. *Encino Motorcars,* 579 U.S. at 222.

The majority's "magic words" threaten the requirement for agencies to engage in reasoned decisionmaking by allowing the Secretary to provide new facts and considerations for a policy reversal, under the guise of "rebalancing" all of the facts "as stated," to come to a contrary conclusion. En banc review is necessary to ensure consistency not only with *State Farm*, *Fox*, and *Encino Motorcars*, but also to ensure consistency with this court's own decision in *Kake*.

B. Rehearing En Banc Was Appropriate in *Kake* for the Same Reasons Rehearing On Banc Is Appropriate Now.

This court, in considering whether to rehear *Kake* en banc, was faced with nearly the same procedural and factual questions it faces today. An agency has made an unexplained reversal in policy on the facts before it, a district court has found the decision arbitrary and capricious, and a panel of the Ninth Circuit reversed after failing to fully consider the requirements under *Fox*. Then, as now,

the panel's majority opinion conflicted with Supreme Court and Ninth Circuit precedent regarding judicial review of agency policy reversals.

The parallels between the current case at issue and *Kake* could hardly be stronger. In *Kake*, the United States Department of Agriculture (USDA) promulgated the Roadless Rule in 2001, a rule that prohibited building or rebuilding roads in inventoried roadless areas. 795 F.3d at 959-960. The USDA gave special consideration to the Tongass National Forest ("Tongass"), as the nation's largest National Forest, and considered whether to exempt it from the Roadless Rule. *Id*. This consideration involved the preparation of environmental studies and examining voluminous comments on the proposed rule. *Id*. The USDA, in its 2001 ROD on the question, decided to apply the Roadless Rule to the Tongass, in order to protect the roadless area values advanced by the Rule which could not be protected under the alternative plans. *Id*.

The State of Alaska agreed to dismiss its subsequent challenge to the rule on the condition that the USDA agree to publish a proposed rule that would exempt the Tongass. Following a comment period, the agency issued a new ROD in 2003. *Id.* at 962. As in the present case, the 2003 ROD stated that the "overall decisionmaking picture" was not "substantially different" from the 2001 ROD and that public comments "raised no new issues" that had not already been explored. *Id*. Instead, the agency proffered the explanation that a rebalancing of the

socioeconomic factors led to its decision while also directly contradicting the findings of the 2001 ROD. What before had been a prohibitive risk to the Tongass environment was now merely a "minor" one. *Id*. at 969. The District Court of Alaska properly granted summary judgment to a challenger of the 2003 ROD because "the Forest Service provided no reasoned explanation as to why the Tongass Forest Plan protections it found deficient in [2001], were deemed sufficient in [2003]." *Id*. at 963. Alaska then appealed to a panel of this court.

In *Organized Vill. of Kake v. United States Dep't of Agric.*, 746 F.3d 970 (9th Cir. 2014) a divided three-judge panel reversed the district court's ruling. As in the present decision, the panel correctly noted that the agency had shown awareness that it was changing its policy and that it believed the new position to be the better one under the *Fox* requirements. *Id*. 974-975, 978. Crucially, however, that panel neglected that when a "new policy rests upon factual findings that contradict those which underlay its prior policy," the agency must "provide a more detailed justification than what would suffice for a new policy created on a blank slate." *Fox*, 556 U.S. at 515. At an en banc rehearing, it was this failure to account for the change in factual findings between the 2001 and 2003 RODs that was ultimately held to be arbitrary and capricious.

> "State Farm teaches that even when reversing a policy after an election, an agency may not simply discard prior factual findings without a reasoned explanation. That is precisely what happened here. The 2003

> ROD did not simply rebalance old facts to arrive at the new policy. Rather, it made factual findings directly contrary to the 2001 ROD and expressly relied on those findings to justify the policy change."

Kake, 795 F.3d at 968 (en banc).

Kake's outcome and analysis is dispositive of the controversy before the court today. The majority took Secretary Bernhardt's contention that he would have made the same decision "even assuming all of the facts as stated" by his predecessor at face value and characterized his action as an act to "rebalance" the socioeconomic values at stake. Op. at 19-22. A closer look at the decision, as conducted by both the district court judge and the dissent, reveals that the reversal rests on direct, and entirely unexplained, contradictions to the Department's previous findings.

The first of only two factual inquiries the majority opinion undertakes is in regard to the land exchange itself. The majority opines that the Secretary did not challenge earlier findings but made "uncontroversial observations" that acquiring the land will "enhance the purposes of the refuge." Op. at 21-22; 2-ER-232. However, the government is not only acquiring additional land for the refuge. Such an observation cannot be read outside the context of the overall land exchange and its purpose – relinquishing land in the heart of the refuge to build a road.

The 2013 Environmental Impact Statement (EIS) found that executing the land exchange and constructing a road "would have major adverse impacts" to

wildlife and would diminish the ability of the government to meet several purposes of the refuge. 1-ER-4–5. The majority opinion does not take this as a refutation of prior findings, even though the Secretary asserts the 2013 decision "discounted the value" of the exchanged lands without further explanation, but says the Secretary was simply "strik[ing] the proper balance." Op. at 21-22; 2-ER-232. Yet, neither Secretary Bernhardt's memo nor the majority opinion reconcile how the same action could diminish the purposes of the refuge in 2013 but promote the purposes of the refuge in 2019. This direct contradiction lacked the required reasoned explanation for disregarding the facts in the 2013 EIS that underlay the 2013 ROD. *Kake*, 795 F.3d at 968.

The majority's second foray into examining the Secretary's factual claims regards the feasibility of transportation methods other than the proposed road. Op. at 22. Here, the Secretary cited a 2015 Army Corps of Engineers report, which he said, "indicate[d] that alternative transportation routes have… proven to be prohibitively costly and/or insufficiently dependable." *Id*. Although the majority finds this to be sufficient justification for a changed position, the dissent deftly points out that the 2015 study provides no conclusory analysis. While the study estimated that the road could potentially be more costly and less dependable than a marine option, it did not find alternatives cost-prohibitive or unfeasible. *Id*. at 31. The Secretary's failure to provide an explanation for his contrary findings on the

one hand, or to provide an analysis of his "reweighing" on the other, implicate impermissible flaws under the APA.

Although an agency is entitled to reweigh socioeconomic concerns on the same record, an agency "cannot simply disregard contrary or inconvenient factual determinations it made in the past." *Fox* at 537 (Kennedy, J., concurring). In *Kake* this court prevented a panel from allowing just that by hearing that case en banc and it should do so now. As pointed out by the dissent when considering the dearth of analysis in the Secretary's memorandum, "either the agency did not consider the relevant factors and articulate a rational connection between the facts found and the choices made, or the agency simply disregarded facts and circumstances that underlay or were engendered by the prior policy." Op. at 33 (internal quotations and citations omitted).

II. EN BANC REVIEW IS NEEDED TO ENSURE CONSISTENCY WITH FUNDAMENTAL APA STANDARDS REQUIRING A RATIONAL CONNECTION BETWEEN THE FACTS FOUND AND THE CHOICE MADE.

It is a bedrock principle that agency decision making must be reasoned and that "an agency's action is arbitrary and capricious… if the agency offers an explanation for the decision that is contrary to the evidence." *State Farm* 463 U.S. 29 at 43; *Ctr. for Biological Diversity v. Haaland*, 998 F.3d 1061, 1067 (9th Cir.

2021). This was true of the USDA's decision to adopt protections it previously found inadequate in the Tongass National Forest, *Kake,* 795 F.3d at 969. It is similarly true here, where the Secretary of Interior approved a detrimental land swap in the Izembek National Wildlife Refuge that, as newly approved, also was subject to fewer mandated limitations on uses.

When the court reviews an agency action, the inquiry into the action's validity is a thorough, probing in-depth review." *Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d 835, 841 (9th Cir. 2003). Such a review reveals that Secretary Bernhardt did not simply rebalance still relevant facts to reverse course, but made a fundamentally different decision that required analysis of the impacts of these new changed the facts and circumstances.

In 2013 Secretary Jewell, and the Environmental Impact Statement (EIS) on which she relied, considered a road that was restricted "primarily to health and safety purposes (including access to and from the Cold Bay Airport) and only for noncommercial purposes." 1-ER-4. In 2018, Secretary Zinke entered into an exchange agreement without further fact-finding or analysis. That action likewise was for a road described as "primarily for health, safety…and generally for non-commercial purposes." 1-ER-5–6.

Though Secretary Bernhardt purported to assume "all the facts as stated in the 2013 ROD," his Department never considered the impacts of this revised

exchange and road. The 2019 Exchange Agreement departed from those considered in 2013 and 2018 in three major ways. First, and most notably, the agreement would permit gravel mining within the boundaries of the refuge in order to build the road, an allowance not considered by Secretaries Jewell or Zinke. 2-ER-189, 195. Second, the Secretary comes to a different conclusion regarding the value of the exchanged lands than the 2013 decision, but the exchange would remove more than double the number of acres from federal ownership than the different actions proposed previously. 2-ER-232 (land valuation); *compare* 2-ER-38–39 with 2-ER-244 (acreage exchanged increased from 200 to 500 acres). Finally, the Secretary's 2019 Exchange Agreement lacked restrictions on the commercial use of a proposed road through the Izembek Refuge which would have been imposed under the 2013 and 2018 proposals. Op. at 27.

Despite the Secretary casting his decision, and supporting memorandum, as a rebalancing under *Fox*, it is a policy reversal coupled with a substantially revised action with new effects that were never analyzed. A simple "yes" or "no" on an unchanged but fully analyzed proposal is vastly different from approving a substantially revised action with effects never analyzed. When presented with an agency decision without analysis, the court "cannot defer to a void." *Or. Nat. Desert Ass'n v. Bureau of Land Mgmt*., 625 F.3d 1092, 1121 (9th Cir. 2010). This lack of analysis represents an arbitrary and capricious failure of the Secretary to

"consider an important aspect of the problem" and offer "an explanation for [his] decision that runs counter to the evidence before the agency." *State Farm*, 463 U.S. at 43.

III. EN BANC REVIEW IS NECESSARY TO ENFORCE THE PROCEDURES DICTATED BY CONGRESS IN TITLE XI OF ANILCA.

Secretary Bernhardt's decision must be set aside because it circumvents the procedures required by Congress in ANILCA to provide for public, Congressional, and Presidential participation in the decision to allow construction of a road through a wildlife refuge and designated Wilderness. 5 U.S.C. §706 (2)(D). The majority's interpretation also raises fundamental questions regarding agency decision making and the balance of powers for the fifteen cabinet-level departments and the many agencies they contain.

Title XI of ANILCA is the "single comprehensive statutory authority" for approving transportation systems within conservation areas like the Izembek. 16 U.S.C. §§ 3161(c), 3162(4)(A). To consider a road through any wildlife refuge or other conservation lands in Alaska, the law requires agencies to prepare an EIS; consult with other federal and state agencies; provide public notice of the proposed transportation system for comment from interested individuals and organizations;

and make "detailed findings supported by substantial evidence" regarding nine enumerated factors. *Id*. at § 3164. For road proposals through a designated Wilderness the Executive Branch cannot act unilaterally but must comply with additional procedural requirements to gain approval from the Legislative Branch. If recommended for approval by the President, Congress must then approve a joint resolution before any other agency authorizations may be issued to allow a road. *Id*. at §3166(b); *see also* 16 U.S.C. § 1132(e) (requiring similar process for modifying Wilderness boundaries under the Wilderness Act).

ANILCA requires compliance with these procedures for any agency which "has jurisdiction to grant any authorization… without which a transportation or utility system cannot, *in whole or in part*, be established or operated." *Id*. at §3162(1) (emphasis added). The land exchange at issue here is the first authorization necessary to build a new road through the Izembek, without which a road cannot be established and the majority concede that the purpose of the transfer is to build a road. Op. at 24. Rather than enforce the mandate of Title XI, the majority opinion allows the Secretary to dispose of the procedures established by Congress through an evasive two-step maneuver: swap lands out of the refuge, then build the road in those previously protected areas, thus evading all of the protective statutory process.

The majority's interpretation of Title XI allows the Secretary nearly unrestricted power to override the procedures dictated by Congress to allow roads through Wilderness and conservation areas. Such a decision upsets the deliberate balance of powers struck in ANILCA and excludes the public from direct and representative participation in the future of a unique Wilderness set aside for future generations of Americans.

En banc review is necessary to uphold the procedural requirements mandated by Congress in ANILCA and ensure the Secretary engages in reasoned decisionmaking as demanded by the APA.

CONCLUSION

For the foregoing reasons, the undersigned *amici* request that this Court grant the Petition for Rehearing En Banc.

Respectfully Submitted,

/s/ Gregor A. MacGregor
Gregor A. MacGregor
Faculty Fellow
University of Colorado Law School
2450 Kittredge Loop Drive
Boulder, CO 80309
(303) 735-5880
Gregor.MacGregor@colorado.edu

Counsel for Amici
CO Bar No. 53900
Dated: May 4th, 2022

CERTIFICATE OF COMPLIANCE

I certify pursuant to Fed. R. App. P. 29 (b) and 32 and Ninth Circuit Rules 29-2(c) that this brief contains 3,521 words and has been prepared in 14-point Times New Roman proportionally spaced typeface.

s/ Gregor A. MacGregor
Gregor A. MacGregor
Faculty Fellow
University of Colorado Law School
2450 Kittredge Loop Drive
Boulder, CO 80309
(303) 735-5880
Gregor.MacGregor@colorado.edu

CERTIFICATE OF SERVICE

I certify that on May 4th, 2022, I electronically filed a copy of the foregoing with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system, which will send electronic notification of such filings to the attorneys of record in this case.

s/ Gregor A. MacGregor
Gregor A. MacGregor
Faculty Fellow
University of Colorado Law School
2450 Kittredge Loop Drive
Boulder, CO 80309
(303) 735-5880
Gregor.MacGregor@colorado.edu

APPENDIX A: LIST OF *AMICI*[2]

William L. Andreen
Research Professor of Law
University of Alabama Law School
Tuscaloosa, AL 35487
(205) 348-7091
wandreen@law.ua.edu

Hope Babcock
Professor of Law
Georgetown University Law Center
600 New Jersey Ave, NW
Washington, DC 20001
(202) 662-9481
hope.babcock@law.georgetown.edu

Michael C. Blumm
Jeffrey Bain Faculty Scholar & Professor of Law
Lewis and Clark Law School
10101 S. Terwillinger Blvd.
Portland, OR 97219
(503) 768-6600
blumm@lclark.edu

John Bonine
B.B. Kliks Professor of Law
University of Oregon
1221 University of Oregon
Eugene, OR 97403
(541) 346-1559
ejohn@elaw.org

---

[2] Please note that the individuals listed below have joined this brief as signatories in their individual capacity only, not as representatives of the institutions with which they are affiliated.

William W. Buzbee
Edward and Carole Walter Professor
Professor of Law
Faculty Director, Environmental Law & Policy Program
Georgetown University Law Center
McDonough 574
600 New Jersey Avenue NW
Washington DC 20001
(202) 661-6536
wwb11@law.georgetown.edu

Alex Camacho
Chancellor's Professor of Law
Faculty Director, Center for Land, Environment, and Natural Resources
University of California, Irvine
401 East Peltason Drive
Law 4500-A
Irvine, CA 92697
(949) 824-4160
acamacho@law.uci.edu

Tim Duane
Professor-in-Residence
University of San Diego School of Law
5998 Alcala Park
San Diego, CA 92110
(415) 509-5263
tpduane@sandiego.edu

Robert Glicksman
J.B. & Maurice C. Shapiro Professor of Environmental Law
The George Washington University Law School
2000 H Street N.W.
Washington, D.C.
(202) 994-4641
rglicksman@law.gwu.edu

Craig Johnston
Professor of Law
Lewis and Clark Law School
10101 S. Terwillinger Blvd.
Portland, OR 97219
(503) 768-6707
craigj@lclark.edu

Kevin Lynch
Associate Professor
University of Denver Sturm College of Law
Office 365C, Frank H. Ricketson Law Bldg.
2255 East Evans Ave.
Denver, CO 80208
(303) 871-6039
klynch@law.du.edu

Gregor A. MacGregor
Faculty Fellow
University of Colorado Law School
2450 Kittredge Loop
Boulder, CO 80309
(303) 735-5880
gregor.macgregor@colorado.edu

Patrick McGinley
Judge Charles H. Haden II Professor of Law
West Virginia University College of Law
P.O. Box 6130
One Law Center Drive
Morgantown, WV 26506
(304) 293-5301
pmcginley@igc.org

Joel A. Mintz
Professor of Law Emeritus and C. William Trout Senior Fellow
Nova Southeastern College of Law
Davie, FL 33314
(305) 321-1344
mintzj@nova.edu

Patrick Parenteau
Professor of Law
Senior Counsel, Environmental Advocacy Clinic
Senior Counsel, Institute for Energy & Environment
Vermont Law School
164 Chelsea St.
South Royalton, VT 05068
(802) 831-1000
pparenteau@vermontlaw.edu

Heather E. Payne
Associate Professor of Law
Seton Hall University School of Law
1109 Raymond Blvd.
Newark, NJ 07102
(973) 642-8400
heather.payne@shu.edu

Zygmunt Plater
Professor of Law
Coordinator, Boston College Land & Environmental Program
Boston College Law School
885 Centre Street
Newton Center, MA 02459
(617) 552-4387
plater@bc.edu

Ann Powers
Professor Emerita of Law
Global Center for Environmental Legal Studies
Elizabeth Haub School of Law at Pace University
78 N. Broadway
White Plains, NY 10603
(443) 837-6063
apowers@law.pace.edu

Jason Anthony Robison
Professor of Law
University of Wyoming College of Law
1000 E. University Ave. Dept. 3035
Laramie, WY 82071
(307) 766-6107
jrobiso8@uwyo.edu

Daniel Rohlf
Professor of Law
Lewis and Clark Law School
10101 S. Terwillinger Blvd.
Portland, OR 97219
(503) 768-6707
rohlf@lclark.edu

Tom Romero
Associate Professor of Law
University of Denver Sturm College of Law
Office 415D
Frank H. Ricketson Law Bldg.
22255 E. Evans Ave.
Denver, CO 80208
(303) 871-7784
tromero@law.du.edu

Jonathan Skinner-Thompson
Associate Clinical Professor
Director, Natural Resources & Environmental Law Clinic
University of Colorado Law School
2450 Kittredge Loop
Boulder, CO 80309
(303) 735-5880
Jonathan.SkinnerThompson@colorado.edu

Susan Lea Smith
Professor of Law
Willamette University
Collins Legal Center 428
245 Winter St. SE
Salem, OR 97301
smiths@willamette.edu

William Snape
Professor and Assistant Dean
American University, Washington College of Law
4300 Nebraska Ave. NW
Washington, DC 20016
(202) 274-4000
wsnape@wcl.american.edu

Peter Strauss
Betts Professor of Law Emeritus
Columbia Law School
435 W 116th St.
New York, NY 10027
(212) 854-2640
plsathome@gmail.com

David A. Westbrook
Louis A. Del Cotto Professor
Co-Director, UB NY Program in Finance and Law
University of Buffalo School of Law
State University of New York
O'Brian Hall, 211 Mary Talbert Way
Buffalo, NY 14260
(716) 645-2052
dwestbro@buffalo.edu