

# TRENDS IN CLINICAL LEGAL EDUCATION AFFECTING AGRICULTURE

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## ABSTRACT

*Law schools often claim to offer a balanced perspective in their practical skill offerings and that they aim to teach law students how to think critically about many, often competing, perspectives in agriculture and environmental law. Yet, the relative paucity of clinical opportunities for law students to gain practical skills experience supporting agriculture and natural resource users portray a very different reality. That reality indicates that law schools may be more interested in training environmental warriors at the expense of a balanced education.*

## I. INTRODUCTION

Many of the larger legal disputes that await environmental or agricultural law students upon graduation are centered on the balance of responsible natural resource use and extraction, and the preservation of the planet and its resources.<sup>1</sup>

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1. Terms like “extraction”—at least in the view of the authors’ shared experience on a law school campus—are often met with chagrin and disdain by special interest environmental groups. However, there can be no real debate that modern day living requires extraction for things like copper to transmit electricity to build and charge laptops and cell phones, and lithium for the car batteries that the Biden administration’s climate change strategy depends

The battle between natural resource users seeking to develop natural resources—which provide food, fiber, and energy to the nation—and special interest groups opposing them in the name of environmental preservation is regularly highlighted in the news.<sup>2</sup>

Law schools are charged with equipping future generations of lawyers with the legal education and practical skills necessary to advise family farms and corporations, engage in courtroom challenges, and counsel government policymakers about responsible natural resource use.<sup>3</sup> Law schools should adopt an approach that offers law students a balanced perspective so future generations of lawyers can anticipate arguments raised by opposing counsel and meaningfully advise clients and policymakers. After all, this nation needs lawyers not only representing environmental interests, but also lawyers who can represent natural resource development interests, which modern living so heavily depends upon.

The “success” of existing environmental law programs is usually measured by whether the students have delayed or terminated natural resource projects, promoted further regulation, or disrupted agricultural production.<sup>4</sup> To see the definition of a “successful” environmental clinic, one need only browse websites of environmental law clinics to see that they tout their victories halting natural resource projects, expanding the scope and number of regulations, or further regulating agriculture.<sup>5</sup>

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upon. *See, e.g.*, Bianca Nogrady, *Your Old Phone is Full of Untapped Precious Metals*, BBC (Oct. 18, 2016), <https://www.bbc.com/future/article/20161017-your-old-phone-is-full-of-precious-metals> [<https://perma.cc/R7MD-82CT>] (“Smartphones are pocket-sized vaults of precious metals and rare earths. A typical iPhone is estimated to house around 0.034g of gold, 0.34g of silver, 0.015g of palladium and less than one-thousandth of a gram of platinum. It also contains the less valuable but still significant aluminum (25g) and copper (around 15g).”).

2. *See, e.g.*, Brad Plumer & Hiroko Tabuchi, *How Politics Are Determining What Stove You Use*, N.Y. TIMES (Dec. 16, 2021), <https://www.nytimes.com/2021/12/16/climate/gas-stoves-climate-change.html> [<https://perma.cc/2R9K-7NR4>].

3. *See* STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. § 301(a) (AM. BAR ASS’N 2022).

4. *See* Michael C. Blumm, *Environmental Law at 50: A Cutting-Edge Journal Examining the Central Issues of Our Time*, 50 ENV’T L. 1, 2-3 n.4-6 (2020) (discussing the success of Lewis & Clark Law School’s environmental law program as tied to its environmental law clinics).

5. *See* Pace Energy and Climate Center Recommends Decarbonizing Buildings and Gas Utility Sectors, PACE UNIV. (July 29, 2020), <https://law.pace.edu/news-and-events/news/pace-energy-and-climate-center-recommends-decarbonizing-buildings-and-gas> [<https://perma.cc/WV2E-AHCV>]; *see also* *Public Lands*, LEWIS & CLARK L. SCH. (Feb. 6, 2022, 9:39 PM), [https://law.lclark.edu/centers/earthrise/our-work/public\\_lands/](https://law.lclark.edu/centers/earthrise/our-work/public_lands/) [<https://perma.cc/RKW4-SBW6>].

For example, the Pace Law School Energy and Climate Center has developed a framework to stop the growth of natural gas use in buildings.<sup>6</sup> The Vermont Law School's Environmental Advocacy Clinic highlights its support and help in defending Vermont's first-in-the-nation labeling law for genetically-engineered foods.<sup>7</sup> The University of Washington School of Law Regulatory Environmental Law and Policy Clinic emphasizes its work to expand monitoring and regulation of air emissions from concentrated dairy feeding operations and to broaden the regulatory reach of the Environmental Protection Agency's "Waters of the United States" rule.<sup>8</sup> Lewis & Clark Law School's Earthrise Law Clinic highlights how it has stopped timber sales and vegetation management projects designed to remove hazardous trees, reduce fuel load, and create fuel breaks on national forests.<sup>9</sup>

Since their inception, natural resources, environmental, and animal law programs have been dominated by the view that the production of food, fiber, and energy, is evil and must be significantly constrained.<sup>10</sup> This Essay reviews the current state of these types of programs at law schools, the trend in expanding these programs, and concludes that there is a need for providing prospective students with a legal perspective that appreciates, if not supports, the production of food, fiber, and energy through classroom and clinical learning. As an example, we describe the Western Resources Legal Center, which provides law students an awareness for the challenges faced by agriculture and natural resource-dependent communities and businesses. This is done through classroom education with hands-on representation of clients faced with real legal issues in the industry of producing, food, fiber, and energy.<sup>11</sup>

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6. *Pace Energy and Climate Center Recommends Decarbonizing Buildings and Gas Utility Sectors*, *supra* note 5.

7. *Environmental Advocacy Clinic*, VT. L. SCH. (Feb. 6, 2022, 9:36 PM), <https://www.vermontlaw.edu/academics/clinics-and-externships/environmental-advocacy-clinic> [<https://perma.cc/X3JK-2GQK>].

8. *Regulatory Environmental Law & Policy Clinic*, UNIV. OF WASH. (Feb. 6, 2022, 9:37 PM), <https://www.law.uw.edu/academics/experiential-learning/clinics/environmental-law> [<https://perma.cc/43SS-262D>].

9. *Public Lands*, *supra* note 5.

10. See generally J.B. Ruhl, *Farms, Their Environmental Harms, and Environmental Law*, 27 *ECOLOGY L.Q.* 263, 266 (2000).

11. See generally *About Us*, W. RES. LEGAL CTR. (Feb. 6, 2022, 9:43 PM), <https://www.wrlegal.org/about-us> [<https://perma.cc/V638-EXJY>].

## II. CLINICAL LAW PROGRAMS THAT CHALLENGE AGRICULTURE AND NATURAL RESOURCE USE DOMINATE LEGAL EDUCATION AND ARE EXPANDING

Coinciding with the passage of landmark environmental laws in the 1970s,<sup>12</sup> many of which provided for citizen suits, law schools began developing environmental law clinical programs as an educational tool for their students. The Vermont Law School established its environmental law program in 1978.<sup>13</sup> Environmental law programs and clinics have since vastly expanded. As one author described, “[e]nvironmental law clinics have sprouted like mushrooms at law schools across the country in recent years.”<sup>14</sup> The vast majority of law schools in the United States now have an environmental law program and an ever-expanding number now boast environmental law clinics.<sup>15</sup>

This concept of an environmental law clinic provides students with the opportunity to engage in pro bono environmental work through an educational law firm within a law school. Once an innovative idea, such clinics have now become a common component of law curriculum and clinical offerings continue to expand in a variety of areas.<sup>16</sup> Borrowing the archetype from environmental law clinics, animal law clinics are more recently being established and continue to further

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12. See generally Endangered Species Act of 1973, 16 U.S.C. § 1531; Marine Mammal Protection Act of 1972, 16 U.S.C. § 1361; National Forest Management Act of 1976, 16 U.S.C. § 1600; Federal Water Pollution Control Act of 1972, 33 U.S.C. § 1151; National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321–4347; Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901; Clean Air Act of 1970, 42 U.S.C. § 7401; Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701.

13. *Environmental Law Specialization*, VT. L. SCH. (Feb. 6, 2022, 9:22 PM), <https://www.vermontlaw.edu/academics/specializations/environmental-law> [<https://perma.cc/HYW8-577Z>].

14. Terry Carter, *Law Clinics Face Critics: Business Interests Fire Up Challenges to Schools' Environmental Law Projects*, 88 ABA J., no.7, at 24, 24 (2002).

15. See generally *Best Environmental Law Programs*, US NEWS (Feb. 6, 2022), [https://www.usnews.com/best-graduate-schools/top-law-schools/environmental-law-rankings?\\_mode=table](https://www.usnews.com/best-graduate-schools/top-law-schools/environmental-law-rankings?_mode=table) [<https://perma.cc/9KP5-LC2B>]; *Law Schools with Emphasis on Environmental Law*, UNIV. OF PITTSBURGH JOHNSTOWN (Feb. 6, 2022), <https://www.johnstown.pitt.edu/academics/majors-programs/social-sciences/pre-law/law-schools-emphasis-environmental-law> [<https://perma.cc/HGP4-QM4U>] (listing programs and clinics); *New Donation Will Create an Environmental Law Clinic and Environmental Justice Institute*, STETSON UNIV. (Nov. 25, 2020), <https://www2.stetson.edu/law/news/index.php/2020/11/25/new-donation-will-create-an-environmental-law-clinic-and-environmental-justice-institute/> [<https://perma.cc/73FN-S4SE>] (unveiling one of the most recent additions to environmental law clinics was at Stetson Law School).

16. See generally *Best Environmental Law Programs*, *supra* note 15; *New Donation Will Create an Environmental Law Clinic and Environmental Justice Institute*, *supra* note 15.

expand.<sup>17</sup> Not surprisingly, the nonprofit Animal Legal Defense Fund (“ALDF”) explains its goal to establish and expand animal law clinics on law school campuses throughout the country:

The Animal Legal Defense Fund works closely with law students and law professionals to advance the emerging field of animal law. Moving toward the day when animal law is part of the curriculum at each and every law school, the Animal Law Program collaborates with students, faculty, and school administrations to facilitate the development of animal law courses and assists students in forming Animal Legal Defense Fund Student Chapters.<sup>18</sup>

ALDF notes there are over 160 animal law classes and 200 student chapters at law schools across the country: “Currently, animal law is taught at some of the most reputable and respected law schools in the country—including highly ranked schools such as Harvard, Stanford, UCLA, Northwestern, University of Michigan and Duke.”<sup>19</sup> For example, the Animal Legal Defense Fund launched the Center for Animal Law Studies, “a first-of-its-kind collaboration between the Animal Legal Defense Fund and Lewis & Clark Law School.”<sup>20</sup> Which, “[a]s an academic and practical forum for the burgeoning field of animal law, the Center for Animal Law Studies provides essential programs and services for law students under the guidance of experienced animal law professors and attorneys.”<sup>21</sup> More recently, Lewis & Clark even announced that the ABA has provided acquiescence for a Master of Studies in Animal Law Degree. This program is intended to expand the field of animal law to non-lawyers.

Today, most law schools offer law students clinical opportunities to represent clients rather than natural resource use and modern agriculture.<sup>22</sup> However, there is an unmet need for future lawyers to gain exposure to a balanced perspective and become equipped to help future clients and our nation’s policymakers navigate the field of environmental or agricultural law. Over the years, industry groups and other stakeholders have occasionally sought to shut down environmental law clinics arguing taxpayer funded universities should not

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17. See generally Ralph A. DeMeo & Bonnie Malloy, *The Politics of Animal Law: Lessons Learned From the Environmental Law Movement*, in WHAT CAN ANIMAL LAW LEARN FROM ENVIRONMENTAL LAW? 43 (Randall S. Abate ed., 2015).

18. *Legal Education*, ANIMAL L. DEF. FUND (Feb. 6, 2022, 9:41 PM), [https://aldf.org/how\\_we\\_work/legal-education/](https://aldf.org/how_we_work/legal-education/) [https://perma.cc/G6BF-FQN4].

19. *Id.*

20. *Id.*

21. *Id.*

22. See, e.g., Adam Babich & Jane F. Barrett, *Why Environmental Law Clinics?*, 43 ENV’T. L. REP. NEWS & ANALYSIS 10039, 10044 (2013).

be used to attack businesses that pay taxes, provide jobs, and derive economic benefits.<sup>23</sup>

In principle, most law professors, both doctrinal and clinical, would agree that legal education ought not to restrict law students' exposure to the varying perspectives of society (including both urban and rural communities) as law schools prepare the future generation of lawyers. Therefore, we believe the better approach to legal education is not to shut down opposing views, but to support expansion of alternative practical skills offerings at law schools. Opportunities that balance the one-sided, over-regulation, litigation assault on resource use by existing environmental law clinics (and burgeoning animal law clinics).

The next section describes an example of a unique legal program that provides law students with classroom and hands-on education from the perspective of natural resource clients and communities that depend on forests, farms, minerals, and oil and gas.

### III. WESTERN RESOURCES LEGAL CENTER IS AN EXAMPLE OF A CLINICAL PROGRAM DEVELOPED TO PRESENT AN ALTERNATIVE PERSPECTIVE THAT SUPPORTS AGRICULTURE AND RESPONSIBLE NATURAL RESOURCE USE

#### *A. WRLC History and Mission*

In response to the void of practical skills programs that provide an alternative for law students interested in pursuing a career addressing legal issues in agriculture and the use of natural resources, from the perspective of the agricultural sector and rural communities, Lewis & Clark Law School formed the Western Resources Legal Center (WRLC).<sup>24</sup> WRLC began with a single employee, Executive Director and attorney Caroline Lobdell, and has since grown modestly with the addition of two staff attorneys.<sup>25</sup> WRLC arose out of the vision of ranching, farming, timber, aggregate, resource development interests, and a few legal educators and determined law students, to balance the playing field of natural resource and environmental legal education.<sup>26</sup> James Huffman, as the Dean of the Lewis & Clark Law School when WRLC was formed, wanted to provide students the opportunity to learn to advocate for natural resource users and dependent communities as they gain critical experience in practical legal skills.<sup>27</sup>

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23. *Id.* at 10041; Carter, *supra* note 14, at 24.

24. *About Us*, *supra* note 11.

25. *See id.*

26. *Id.*

27. *See James Huffman*, LEWIS & CLARK L. SCH. (Feb. 17, 2022, 8:42 AM), <https://www.lclark.edu/live/news/13124-james-huffman> [<https://perma.cc/4LPB-JB9F>].

WRLC's mission is to:

[P]rovide law students with quality instruction and excellent opportunities to develop their legal skills and knowledge of natural resources and environmental laws through the legal representation of clients active in natural resource related industries that will lead to careers as attorneys and policymakers with an appreciation for the challenges faced by, and importance of, natural resource industries.<sup>28</sup>

The mission is achieved through the classroom and field placements, using work with ongoing litigation, legislation, and regulatory matters as educational tools.<sup>29</sup> With the knowledge and practical skills gained through the WRLC program, the students have had great success in obtaining permanent jobs in natural resource and environmental fields upon graduation.<sup>30</sup>

#### *B. Western Resources Legal Center Seminar and Student Work in Field Placements*

The classroom uses a seminar format to introduce students to a variety of natural resource legal issues that affect farmers, ranchers, forest landowners and wood products producers, oil and gas interests, water users, and mining companies.<sup>31</sup> Guest speakers from these fields are used to inform the class about their businesses and share their experiences with legal issues that affect them.<sup>32</sup> WRLC solicits applications from prospective natural resource clients who seek assistance with a legal problem.<sup>33</sup> Legal projects are selected based upon their value as a teaching tool for the students and relative significance to the natural resources community.<sup>34</sup> A legal advisory committee of practicing attorneys help as needed in project selection.<sup>35</sup> WRLC will not accept a legal issue where the interest of one natural resource group conflicts with another natural resource group.<sup>36</sup>

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28. *About Us*, *supra* note 15.

29. *See For Students*, W. RES. LEGAL CTR. (Feb. 17, 2022, 8:44 AM), <https://www.wrlegal.org/for-students> [<https://perma.cc/2QNK-46GN>].

30. *See generally* Caroline Lobdell, *Year in Review: Executive Director Update*, W. RES. LEGAL CTR. (Lewis & Clark L. Sch., Portland Or.), 2021, at 2, 5.

31. *See For Students*, *supra* note 29.

32. *See id.*

33. *How We Can Help*, W. RES. LEGAL CTR. (Feb. 25, 2022, 1:14 PM), <https://www.wrlegal.org/how-we-can-help> [<https://perma.cc/2RVL-JM62>].

34. *Id.*

35. *See For Students*, *supra* note 29.

36. *See id.*

Class time consists of learning about statutes, regulations, prior court decisions, civil procedure, and how they apply to WRLC's existing legal matters.<sup>37</sup> The students use the knowledge gained to help with administrative law, policy issues, and litigation in state and federal courts.<sup>38</sup> Students conduct research on a legal issue, review discovery or an administrative record, prepare a complaint, motion to intervene, and motions for summary judgement and preliminary injunctions.<sup>39</sup> Certified law students have represented WRLC clients in the courtroom.<sup>40</sup> Students also gain critical thinking skills on how to advise a client by simply being involved in helping WRLC determine whether WRLC should even accept a prospective client.<sup>41</sup> In doing so, law students help assess whether the potential legal matter would pit one natural resource user against another, or whether the matter has merit to be accepted.<sup>42</sup>

WRLC has been involved in various legal matters.<sup>43</sup> It represented Martinez Livestock in a case where plaintiffs sought to eliminate Martinez's long-established domestic sheep operation on National Forest grazing allotments on the grounds that domestic sheep transmit disease to more recently reintroduced bighorn sheep.<sup>44</sup> WRLC also represented the American Farm Bureau Federation, Oregon Farm Bureau, and Oregon Seed Council as defendant-intervenors in a case where environmental groups challenged the decision of the United States Fish & Wildlife Service to list the streaked-horned lark as "threatened" rather than "endangered" under the Endangered Species Act ("ESA").<sup>45</sup> WRLC prevented plaintiff's attempt to invalidate an ESA Section 4(d) rule that would broadly exempt various agricultural practices from liability for harm to the lark under ESA's Section 9 "take" provisions.<sup>46</sup>

WRLC students have also worked with the Oregon State Bar Agriculture Executive Committee in authoring practitioner guides related to Oregon's Right to Farm Act, pesticide use, and the Clean Water Act's National Pollution Discharge Elimination System Permits. Given the hands-on approach to the course and

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37. *See For Students, supra* note 29.

38. *Id.*

39. *Id.*

40. *See id.*

41. *See id.*

42. *See id.*

43. *See Lobdell, supra* note 30, at 2.

44. *WildEarth Guardians v. Bail*, No. 20-CV-440-RMP, 2021 WL 1550567, at \*1-2 (E.D. Wash. Apr. 20, 2021).

45. *Ctr. for Biological Diversity v. U.S. Dep't of the Interior*, No. 18-cv-00359-MO (D. Or. July 8, 2019) (Leagle).

46. *See id.*



limited staff, WRLC can accept only up to about eight students per semester.<sup>47</sup> The WRLC course continues to be fully enrolled with a waitlist.<sup>48</sup> In response to strong student interest, WRLC has expanded its curriculum and now offers an Advanced Seminar for returning WRLC students.<sup>49</sup>

WRLC also continues to build its externship program.<sup>50</sup> It organizes field placements with legal practitioners at law firms, businesses, and trade associations.<sup>51</sup> Students in field placements are located throughout the country and are supervised by a practicing attorney.<sup>52</sup> There have been field placements with the Oregon Cattlemen's Association, American Forest Resource Council, Oregon Farm Bureau, and other natural resources organizations.<sup>53</sup> Through field placements, students work directly with attorneys experienced in natural resource, environment, and agricultural law.<sup>54</sup> Additionally, students develop further knowledge of, and help resolve, the current legal issues that confront businesses and landowners in these fields.<sup>55</sup>

### *C. WRLC Student Perspectives and Prospects*

WRLC has been well received by participating students who review the class at the end of each semester. In particular, students appreciate the opportunity to learn a different perspective. One prior student said that "Before taking WRLC, I thought that there was only one way to look at environmental and natural resource law."<sup>56</sup> The same student also said, "Not only did I learn more about civil procedure . . . [and] litigation practice in this course than any other course in law school, but I also learned how to appreciate natural resources from perspectives other than non-profit public interest."<sup>57</sup> "If the goal is to encourage good stewardship of our natural environment and wild lands, there is a desperate need

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47. Lobdell, *supra* note 30, at 1.

48. *Id.*

49. *For Students*, *supra* note 29.

50. Lobdell, *supra* note 30, at 1.

51. *Id.*

52. *About Us*, *supra* note 11; *see For Students*, *supra* note 29.

53. *For Students*, *supra* note 29.

54. *See id.*

55. *See id.*

56. *Home*, W. RES. LEGAL CTR., <https://www.wrlegal.org/> [<https://perma.cc/7G86-JL74>].

57. *Id.*

for programs like WRLC out there training and inspiring those who can advocate for . . . those good stewards.”<sup>58</sup>

Alumni of the program are also pleased with their WRLC experience: “beyond the academic and vocational exposure, WRLC brought to life the environmental challenges faced by resource users and illustrated the complexity of natural resource issues.<sup>59</sup> The program exposed me to an alternate vision of resource users — not just as individuals who seek to utilize natural resources, but also as stewards of the land, proponents of healthy ecosystems, and pioneers in climate change solutions.”<sup>60</sup>

Graduating students are successful in obtaining permanent jobs with employers in the private and government sectors that regularly are faced with natural resource issues including the California Farm Bureau Federation, Oregon Farm Bureau, private law firms, Idaho Governor’s Office of Species Conservation, U.S. Department of Justice, U.S. Department of Agriculture, Environmental Protection Agency, Tribes, and International Geophysical Contractors Association.<sup>61</sup>

Students that are simply curious about alternative views in natural resource and agricultural law also gain an appreciation for the benefits that natural resources and agriculture provide to society.<sup>62</sup> Those WRLC students who gain careers on the regulatory side are equipped not only with the perspective of the regulated industries, but a balanced way to solve a seemingly never-ending debate. Natural resource use does not have to be an “all-or-nothing” proposition, and law schools should endeavor to develop law students that critically think about both perspectives and competing viewpoints under the agricultural law framework.

While WRLC is currently the nation’s only hands-on training program teaching students to represent natural resource users with hands-on litigation, several law schools have approached WRLC about building similar programs around the country. Often once the law school faculty understands WRLC’s mission, law schools retreat.

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58. LEWIS & CLARK L. SCH., Fall 2019 Law Faculty and Course Evaluation for LAW 786-A: Nat Res Litig/WRLC: Practicum (Law - Fall 2019 Lobdell/Horngren): Caroline Lobdell (2019) (on file with Drake Journal of Agricultural Law).

59. Lobdell, *supra* note 30, at 4.

60. *Id.*

61. Caroline Lobdell, *Year in Review: Executive Director Update*, W. RES. LEGAL CTR. (Lewis & Clark L. Sch., Portland, Or.), 2020, at 5-6.

62. LEWIS & CLARK L. SCH., *supra* note 58.

#### IV. CONCLUSION

On the future of natural resource legal education, Dean Huffman likens WRLC to “a little boat that is finally afloat.”<sup>63</sup> In WRLC’s 2008 newsletter, he writes:

There is a lot more to be done to make it seaworthy and expand the fleet, but it can be done. My dream is to see WRLC serve 10 to 15 students every semester at Lewis and Clark, with similar entities at other law schools across the country. Imagine an armada of sorts - many small boats providing practical experience for students and much-needed advocacy for natural resource interests. With any luck, we could very well calm the seas and perhaps even ‘turn the tide.’<sup>64</sup>

Just as in the law, where there is often a difference between the academic and practical application of legal theory, law school faculty seem to applaud the idea of offering law students a diverse education and hands-on exposure to competing views. However, in reality, the large number of environmental and animal law clinics nationwide compared to the paucity of natural resource advocacy clinics tells a much different story. At minimum, the future of natural resource legal education should include opportunities for students to be exposed to a balanced view of the use and protection of natural resources. Legal education should also expose students to the view that resource use and protection can be complementary rather than always mutually exclusive. Finally, legal education that supports natural resource use should be welcomed rather than ostracized as part of the law school curriculum and clinical education.

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63. Jackie Lang, *James Huffman: Esteemed Educator, Catalyst for Change*, W. RES. LEGAL CTR. (Lewis and Clark Law School, Portland, OR), 2008, at 4.

64. *Id.*