

CURRICULUM VITAE

Jack R. Tuholske
P.O. Box 749
Bonner, Montana 59802
jtuholske@gmail.com/jtuholske@vermontlaw.edu
(406) 396-6415; (406)-244-1225

EDUCATION

University of Washington, B.A. Political Science (1977).
University of Montana, J.D. with honors (1985).

EMPLOYMENT

U.S.-Asia Partnership in Environmental Law (Vermont Law School). Faculty Advisor (2012-present). A project to advance public interest environmental law in China, working with and educating judges, attorneys, NGOs, students and academics. Over ten extended lecture/teaching trips to China since 2012.

Vermont Law School. Director, Water and Justice Program (2011-present). Co-founder and director of grant-funded research and teaching program focused on public rights in water resources.

Vermont Law School. Visiting Professor (2007-present); summer faculty, Environmental Law Center (2003 - present). Courses designed and taught: Constitutional Law, Administrative Law, Climate Change Mitigation, Climate Adaptation in Natural Systems, Environmental Law (introductory), Constitutions and the Environment, Civil Procedure I, Water Resources, Watershed Resources, Current Issues in Western Resource Litigation, Montana Public Lands Field Seminar.

Fulbright Scholar, University of Ljubljana, Slovenia. (2009) Fulbright Lecturing and Research Award. Taught Comparative (EU/US) Environmental Law and International Law of Climate Change at the University of Ljubljana, Slovenia.

University of Montana School of Law. Visiting Professor (2010-2013); Adjunct Professor (1989 - 2008). Courses: Constitutional Law, Environmental Law, Federal Public Land Law, Law of Climate Change, Advanced Seminar in Natural Resources, Appellate Advocacy.

Tuholske Law Office P.C. (1985 - present). Solo private practice with major emphasis on water, wildlife, constitutional, land use and natural resource litigation; state and federal trial and appellate courts in Western United States A summary of key cases is provided below.

COURSE DESIGN AND INNOVATIVE TEACHING

- Designed and taught over 15 different law and graduate level classes ranging from large lecture format to seminar-style classes at three different law schools since 1989.
- Helped organize and teach Chinese Judges Training, intensive 2-month program on U.S.

environmental law, policy and enforcement, sponsored by Supreme People's Court and Client Earth, winter 2017.

- Developed and taught since 2006 the first outdoor experiential education law class in the U.S., where students spend two weeks in wilderness setting learning about public land and resource management.
- Founder and Director of Vermont Law School Water and Justice Program, an educational program that teaches students policy and legal advocacy by working directly with local NGOs to protect watersheds.
- Designed and taught first Distance Learning (on-line) law course for Vermont.
- Key member of Vermont's Distance Learning team since its inception 2011.
- Designed and taught two courses at University of Ljubljana for Slovenian law students.
- Designed and co-taught with faculty from Uppsala University (Sweden) two-week courses on soil and air pollution at Sun Yat Sen University (China).
- Helped develop and launch environmental law clinic for undergraduate law students at Southwest Forest University (China).
- Lectured judges, faculty and students at 10 Chinese Universities and at Supreme People's Court on variety of U.S. and international law topics including impact assessment, citizen suits, role of the courts and administrative agencies, water law, wildlife law, forestry law.

RECENT PUBLICATIONS

Prof. Zhang Zitai (Fudan University) and Jack Tuholske. *Primary Study on China's Climate Change Legal Framework System*, (in progress, anticipated publication November 2017).

Judge Sun Qian (SPC) and Jack Tuholske, *Exploration and Reflection of the System of Environmental Public Interest Litigation*, Environmental Law Reporter (scheduled June 2017).

Lin Yanmei and Jack Tuholske, *NGOs Win China's First Environmental Public Interest Lawsuit: The Nanping Case*, 45 ELR 11102 (December 2015).

Jack Tuholske, *U.S. State Constitutions: Diamonds in the Rough*, 21 Widener Law Review 239 (2015).

Lin Yanmei and Jack Tuholske, *Field Notes from the Far East: China's New Environmental Protection Law in Action*, 45 ELR 10855 (September 2015).

Kenneth Kilbert and Jack Tuholske: *Moving Forward, Legal Solutions to Lake Erie's Harmful Algal Blooms*, published by Lucas County Ohio, April 2015.

Jack R. Tuholske and Mark Foster, *Solving Transboundary Pollution Disputes Locally: Success in the Crown of the Continent*, 92 Or. L. Rev. 651 (Vo. 3).

Jack R. Tuholske and Rachel Stevens, "Powder River Basin's Abundance of Coal at the Epicenter of Energy Development." Vermont Law Environmental Watch List.
<http://watchlist.vermontlaw.edu/powder-river-basin-coal-leasing/>

Jack R. Tuholske, *The Montana Supreme Court's Conservative Approach to Interpreting New Fundamental Rights*, 72 MONT. L. REV. 237 (2011).

Sarah A. Klahn Esq. and Jack R. Tuholske, *A Survey of Western Water Law Regulation of Coalbed Methane Produced Ground Water*, 77 THE WATER REPORT 1 (July 15, 2010).

Jack R. Tuholske, *Hot Water, Dry Streams: A Tale of Two Trout*, 34 VT L. REV. 927 (2010).

Jack R. Tuholske, *When Is a Stream a Stream, Water Natural, and Property Private?* 59 THE WATER REPORT 10 (Jan.15, 2009).

Jack R. Tuholske, Michael G. Bader, *Creating Resilient Habitats: Native Fish Recovery in a Time of Climate Change*, *Sierra Club Western Regional Office*, (Oct. 2008).

Jack R. Tuholske, *Groundwater and the Public Trust Doctrine: A Fresh Application of an Age-old Principle*, 9 VT J. ENVTL. L. 189 (2008).

Jack R. Tuholske, *The Legislature Shall Make No Law . . . Abridging Montanans' Constitutional Rights to a Clean and Healthful Environment*, 15 SOUTHEASTERN ENVTL. L.J.311 (2007).

RECENT PRESENTATIONS

Lecture, *Comparative Study of Development of U.S. and China Environmental Law and Litigation*, Wuhan University (June 2017).

Co-organizer and panel moderator, *Law and Policy for Ecological Restoration*, sponsored by Vermont Law School, Lake Champlain Sea Grant at University of Vermont, School of Law and Fudan University, Shanghai (March 2017).

Lecture, *Role of Citizens Suits: Clean Water Act case study*, Supreme People's Court, Beijing, October 2016.

Lectures to students and faculty, *Comparisons Between Development of U.S. and China's Environmental Public Interest Litigation*, Wuhan University, Kunming University of Science and Technology, Shandong University, Central South University, Zhongnan University, Minzu University (October 2016).

Presentations, *Case Selection Strategies, Case Studies*, Environmental Public Interest Litigation Workshop, Beijing China (June 2016).

Panel Discussion, *Reflections on Public Interest Environmental Litigation* with Assistant U.S. Attorney General John Cruden, Beijing American Center, Beijing China (June 2016).

Lecture, *Development of US and Chinese Public Interest Litigation*, China University of Law and Politics, Beijing, China (June 2016).

Lecture, *Biodiversity Protection in U.S. Law*, Minzu University, Beijing China (June 2016)

Panel Presentation, *Public Interest Litigation in China*, University of Oregon Public Interest Environmental Law Conference (March 2016).

Presentation, *Watershed Planning, the Lake Erie Algal Blooms*, Watershed Conference, Lijiang, Yunnan Province China (February 2016).

Presentation, Sunshine Law Firm, Beijing China, *Developing Campaigns as Part of Litigation Strategy* (February 2016).

Presentation, University of Toledo (Ohio), *Harmful Algal Bloom* (November 2015).

Lecture Series, Sun Yat-Sen University (mini-course on Clean Air Act) (April 2015).

Panel Presentation, *Recent Developments in Clean Water Act Litigation*, University of Oregon Public Interest Environmental Conference (March 2015).

Panel Presentation, *Litigating State Constitution Environmental Claims, Diamonds in the Rough*, Widener University Law School, (April 2014).

Lecture Series, Sun Yat-Sen University Law School (mini-course on U.S. Environmental Law), Guangzhou China, (March 2014).

Address, *Environmental Litigation in the U.S.* Kunming University of Science and Technology, Kunming, China (March 2014).

Presentation, Southwest China Forestry University Law School, (3-day development workshop for law school student environmental law clinic), Kunming, China (March 2013)

Address, *Elements of Successful U.S. Environmental Law for Climate Change Legislation in China*, National Development and Reform Commission, Beijing China (March, 2012).

Presentation, *Biodiversity and Forest Management Frameworks in the U.S.*, Southwest China Forestry University, Kunming, China (March, 2012).

Presentation, *Protecting the Crown of the Continent, Jewel by Jewel*, McGill University, Montreal, Canada (June, 2011).

Panel Remarks, *The APA and the Abdication of Judicial Responsibility*, University of Oregon Public Interest Environmental Law Conference (Mar. 2011).

Panel Remarks, *Montana's Environmental Constitutional Provisions*, 25th Annual James R. Browning Symposium, Montana Constitutional Law, Panel Moderator, University of Montana School of Law (Oct. 2010).

Address, *Hot Water Cold Trout, Climate Change and Western Fisheries*, McGill-Vermont Symposium, (Oct. 2009).

Address, *Climate Change and Watersheds*, Environmental Center, Ljubljana, Slovenia (April 2009).

Address, *Climate Change and Western Fisheries*, Sierra Club Conference on Global Warming, (Missoula, Montana Jan. 2009).

Address, *Wither Prior Appropriations? Water Law and Endangered Species in the Arid West*, (Environmental Law Society, University of New Mexico School of Law, Oct. 2008).

Address, *Does the ESA Need Reform? Perspectives for a 21st Century Public Land Agenda*, (University of Montana School of Law and Public Policy Research Institute, Sep. 2008).

Address, *Groundwater and the Public Trust*, (Vt. L. Sch. Summer Lecture Series, June 2008).

Address, *New Directions for the Public Trust* (Land, Air & Water Conf., U. of Or. Sch. of L., Mar. 2008).

Address, *Montana's Substantive Environmental Constitutional Rights*, (Vt. L. Sch. Summer Lecture Series, June 2007).

Address, *New Directions in the Clean Water Act* (Land, Air & Water Conf., U. of Or. Sch. of L., Mar. 2007).

C.L.E. Presentation, *Public Trust Doctrine and Stream Access in Montana*, (Mont. St. Bar C.L.E., Fairmont Hot Springs, Feb. 2007).

Faculty Colloquium Address, *The Legislature Shall Make No Law... Abridging Montana's Constitutional Right to a Clean and Healthful Environment* (U. of S. C. Sch. of L., Oct. 2006).

PUBLIC INTEREST LITIGATION

Served as lead or co-lead counsel on over 200 cases involving natural resources, wildlife protection, public lands management, land use and constitutional law in federal courts in Montana, Oregon, Wyoming, Colorado and South Dakota, the Eighth, Ninth and Tenth Circuit Courts of Appeal, U.S. Supreme Court, numerous state district courts in Montana, and the Montana Supreme Court. A summary of select, published decisions is listed below.

NEPA

WildEarth Guardians v. Montana Snowmobile Assn., 790 F.3d 920 (9th Cir, 2015), EIS overturned for failing to consider impacts from snowmobiles; first appellate decision for failure to apply travel planning restrictions to motorized recreational use of public lands.

Northern Plains Resource Council v. Surface Transportation Board, 688 F.3d 1067 (9th Cir. 2011). Decision to build largest new rail project in U.S. overturned based on inadequate EIS and SEIS.

Clean Water Act

Northern Cheyenne Tribe et al v. Montana Department of Environmental Quality, 234 P.3d 51 (Mont. 2010). Tribe and ranchers overturned NPDES permit for failing to include Best Available Technology limiting coal bed methane water pollution.

Clark Fork Coal. v. Dep't of Env'tl. Quality, 197 P.3d 482 (Mont. 2008). Montana Pollution Discharge Elimination System Permit voided because the state failed to take a hard look at impacts from granting

a perpetual discharge of mine waste pollutants without conducting anti-degradation review.

Northern Plains Resource Council v. Fidelity Exploration and Production Company, 325 F.3d 1155 (9th Cir. 2003), *cert. denied*, 540 U.S. 967 (2003). Energy company held liable under Federal Clean Water Act for discharging coal bed methane waste water, a case of first impression.

Friends of the Wild Swan v. U.S. EPA, 130 F. Supp. 2d 1207 (D. Mont. 2000), *aff'd*, 2003 Lexis App. 15271 (July 25, 2003). Pursuant to 33 U.S.C. § 1313(d), of the Clean Water Act, the district court ordered EPA and Montana to prepare Total Maximum Daily Loads (TMDLs) on all impaired streams by 2007. Affirmed on appeal.

Endangered Species Act

Greater Yellowstone Coalition v. Servheen, 672 F.Supp.2d 1105, *aff'd* 665 F.3d 1015 (9th Cir. 2011). Fish and Wildlife Service's decision to delist grizzly bears overturned, grizzly bears ordered relisted.

State of Wyoming v. U. S. Dept of the Interior, 360 F. Supp. 2d 1214 (D. Wyo. 2005), *aff'd*, 442 F.3d 1262 (10th Cir. 2006). Conservation groups intervened on behalf of federal government to successfully defend a challenge by Wyoming to force the de-listing of wolves under Section 4 of the ESA.

Friends of the Wild Swan v. U.S. Fish and Wildlife Service, 945 F. Supp. 1388 (D. Or. 1996). Court invalidated the U.S. Fish and Wildlife Service's failure to list bull trout under the ESA. The Ninth Circuit reversed an initial ruling that the case was moot. 81 F.3d 168 (9th Cir. 1996).

Friends of the Wild Swan v. U.S. Fish and Wildlife Service, 12 F. Supp. 2d 1121 (D. Or. 1997). Summary judgment was granted for plaintiffs in a follow-up case under the ESA over the remaining populations of bull trout, resulting in listing of all remaining populations in the western United States.

Indian Environmental Law

Glacier-Two Medicine Alliance, et al., 88 Interior Board of Land Appeals, 133 (IBLA 85-445, August 9, 1985); *National Wildlife Federation et al. v. Robertson* (D. Mont. 1994). Represented Blackfeet traditionalists under American Indian Religious Freedom Act, National Historic Preservation Act and environmental laws to protect traditional religious uses in Badger-Two Medicine area.

Hagener v. Wallace, 47 P.3d 847 (Mont. 2002). The Montana Supreme Court enjoined transfer of game farm elk to Crow Nation for release into the wild, because of disease posed by release of captive animals. Regulations upheld under Commerce Clause and failure of Crow to intervene.

Montana Environmental Law

Montana Env'tl. Info. Cent. v. Montana Dep't of Transp., 298 Mont. 1, 2000 MT 5, 994 P.2d 676 (Mont. 2000). In a case of first impression, the Court required Supplemental Environmental Impact Statement under the Montana Environmental Policy Act for a transportation project.

Ravalli County Fish and Game Ass'n v. Department of State Lands, 273 Mont. 371, 903 P.2d 1362 (Mont. 1995). A landmark case establishing the Montana Environmental Policy Act's mandatory requirements and adopting federal jurisprudence to evaluate significant impacts.

Water Law

Bitterroot River Protective Ass'n v. Bitterroot Conservation Dist., 346 Mont. 507, 2008 MT 377, 198

P.3d 219 (Mont. 2008). Landmark case affirming constitutional basis for stream access, halting efforts to privatize stream. Attorney fees awarded under Private Attorney General Doctrine because of constitutional significance of case, 2011 MT 51.

Bitterroot River Protective Ass'n. v. Seibel, 108 P.3d 118 (Mont. 2005). Conservation group's objections to four water rights claims upheld, landowner filed "strawman" applications to avoid basin closure.

Montana Wildlife Law

Spoklie v. Mont. Dept. of Fish Wildlife and Parks, 56 P.3d 349 (2002). The Montana Supreme Court overturned an injunction granted preventing enforcement of I-143, an initiative restricting game farms.

Sportsmen for I-143 v. Montana Fifteenth Judicial District, 40 P.3d 400 (2002). The Montana Supreme Court granted a writ of supervisory control ordering district court to allow sportsmen's organizations and ballot initiative sponsors to intervene in case challenging application of the statute.

Montana Land Use

Aspen Trails Ranch v. Simmons, 356 Mont. 41, 2010 MT 79, 230 P.3d 808 (Mont. 2010). Landowners successfully challenged approval of preliminary plat of subdivision based on an inadequate environmental assessment.

Citizens for Responsible Development v. Bd. of County Com'rs of Sanders County, 351 Mont. 40, 2009 MT 182 (Mont. 2009). Represented citizen group and successfully challenged approval of major subdivision based on an inadequate EA that violated the Montana Subdivision and Platting Act.

Flathead Citizens for Quality Growth v. Board of Adjustment, 175 P.3d 282. Citizens group successfully challenged local government decision to allow gravel pit in residential area, without adequately considering growth policy and adverse impacts of the operation.

Public Land Management Agencies

McFarland v. Kempthorne, 464 F. Supp. 2d 1014, *aff'd* 545 F. 3d 1106 (9th Cir. 2008). National Parks and Conservation Association intervened with Glacier National Park, successfully defending a decision to not allow snowmobile access to private land inholder.

Montana Wilderness Ass'n. v. U.S. Forest Serv., 146 F. Supp 2d 1118, *aff'd* in part, *rev'd* in part, 314 F.3d 1146 (9th Cir. 2003); reversed and remanded 124 S. Ct. 2870; amended complaint granted, October 10, 2005, case settled 2007. The case established substantive agency duties to protect wilderness study areas under the Montana Wilderness Study Act of 1977.

Sierra Club v. Forest Serv., 258 F.3d 1281 (10th Cir. 2001). The Forest Service violated the Norbeck Wildlife Preserve Organic Act by authorizing timber sales within the Preserve without first protecting game animals and birds.

Federal and Montana Constitutional Law

Kafka et al. v. Montana Dep't of Fish Wildlife and Parks et al., 348 Mont. 80, 2008 MT 460, 201 P.3d 8 (Mont. 2008), *cert. den.* 130 S. Ct. 394 (2009); *Buhmann v. State of Montana*, 348 Mont. 205, 2008

MT 465, 201 P.3d 70 (Mont. 2008). Represented ballot initiative sponsors; Court held that I-143 was not an unconstitutional, compensable taking of game farm animals, licenses or real property.

Seven-Up Pete Joint Venture v. Montana, 327 Mont. 306, 2005 MT 146, 114 P.3d 1009 (Mont. 2005), *cert. denied*, 546 U.S. 1170 (2006). Successful ballot initiative banning cyanide heap leach mining not a constitutional taking of the mining company's lease rights.

Spoklie v. State of Montana, 411 F.3d 1051 (9th Cir. 2005). Conservation groups intervened with State to defend game farm law against takings, equal protection, due process, and commerce clause claims. Ninth Circuit denied all constitutional claims, holding I-143 a valid police power statute.

Montana Env'tl. Info. Ctr. v. Montana Dep't of Env'tl. Quality, 296 Mont. 207, 1999 MT 248, 988 P.2d 1236 (Mont. 1999). Co-author of amicus brief that successfully argued Montana's constitutional right to a clean and healthful environment was a fundamental, constitutional right.

AWARDS

- 2010 **Kerry Rydberg Award**, University of Oregon Public Interest Environmental Law Conference, for long-term service in the field of public interest law.
- 2009 **Gary Holmquist Award**, Montana Wildlife Federation, for efforts to protect Montana's wildlife and fair-chase hunting legacy.
- 2004 **Nick Cramis Award**, presented by Ravalli County Fish and Game Association, for outstanding contributions to wildlife conservation.
- 2002 **Justice William O. Douglas Award**, presented by the Sierra Club, for significant national accomplishments in the field of environmental law.
- 2001 **Don Aldrich Conservation and Wildlife Award**, presented annually by the Montana Power Company, for citizen contribution to conservation.
- 1999 **Golden Lantern Award**, presented by Montana Wilderness Association, for contributions to wilderness protection.
- 1998 **Special Achievement Award**, presented by Montana Wildlife Federation, for efforts to protect Montana's wildlife.
- 1995 **Conservation Award for Outstanding Legal Work**, presented by the Alliance for the Wild Rockies.

COMMUNITY SERVICE AND PERSONAL INTERESTS

- Board of Directors, Wildland CPR, a national conservation group protecting and restoring public lands (2011-2013).
- President, Swim Missoula Inc., a non-profit organization assisting with fund raising, design and construction of new public 50 meter swimming pool (2005- 2009).

- Chairman, Committee for Missoula Aquatics, successful campaign that passed aquatics bond issue for new public swimming pools in Missoula, Montana (2003).
- Honorary Board Member, Parents Lets Unite for Kids!, a Montana advocacy organization for families with developmentally-disabled children (2003-2008).
- Board of Directors, Missoula Aquatic Club, non-profit competitive swimming club (2001-03).
- Board of Directors, Sussex School, private K-8 alternative school (1994-7).
- Director, Five Valleys Nordic National Ski Patrol (1986-90).
- Founded and directed Adventure Education Program, Sussex School, featuring rock climbing and related activities for 7th and 8th grade students (1985-2000).
- Life-long back-country skier, rock climber, ice climber and mountaineer with over 100 successful technical alpine ascents throughout North America.
- Founding member Montana Masters Swim Team; competitive swimmer for 52 years.

REFERENCES

Siu Tip Lam, Director, U.S.-Asia Partnerships for Environmental Law, Vermont Law School, slam@vermontlaw.edu.

David Mears, Vice Dean and Professor of Law, Vermont Law School, dmears@vermontlaw.edu.

Sarah McMillan Esq., Senior Counsel, WildEarth Guardians, smcmillan@wildearthguardians.org.