

# BRIGHAM DANIELS

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## **EDUCATION**

### **PhD Candidate, Duke University School of the Environment (expected June 2009)**

Research Fields: Political Economy and Environmental Policy

Honors: National Science Foundation Graduate Research Fellowship 2006-08  
Climate Change Policy Partnership Fellowship 2006-07  
Nicholas School Fellowship 2005-06

### **J.D., Stanford Law School (June 2003)**

Honors: Harry S. Truman Foundation Scholarship  
Stanford Public Interest Law Fellowship

Activities: Associate Editor, *Stanford Law Review*  
Public Interest Loan Forgiveness Committee  
Environmental Law Society

### **M.P.A., University of Utah (December 2000)**

Masters Thesis: *Interest Groups and Urban Sprawl*

Honors: University of Utah Graduate Fellowship

Activities: Hinckley Institute of Politics Student Advisory Board

### **B.S., Magna Cum Laude with Honors in Economics, University of Utah (May 1998)**

Honors Thesis: *A Legacy of Conflict: Utah's Growth and the Legacy Highway*, published in part in 1 HINCKLEY JOURNAL OF POLITICS 51 (1998)

Honors: Kennecott and Pringle Scholarships  
Service-Learning Scholar

Activities: Community Service Project Director, Habitat for Humanity  
President of University of Utah Young Democrats  
University Student Government Cabinet

## **PUBLICATIONS (abstracts of articles are provided in Academic Agenda below)**

Articles *Emerging Commons and Tragic Institutions*, 37 ENVIRONMENTAL LAW 515 (forthcoming 2007)

*California, Climate Change and the Constitution*, 37 ENVIRONMENTAL LAW REPORTER 10,653 (forthcoming 2007), with Erwin Chemerinsky, Brett Hardy, Tim Profeta, Chris Schroeder, and Neil Siegel

*Reviving Zion in a Sea of Sprawl: Revisiting Nineteenth-Century Mormon Urban Planning*, 28 JOURNAL OF LAND, RESOURCES, AND ENVIRONMENTAL LAW \_\_\_\_ (forthcoming 2007)

*Is That a Loophole or a Noose? How Congress Assured Neglect of Rural America's Arsenic-Tainted Tap Water*, with Erika Weinthal and Blake Hudson (draft available upon request, to be submitted to political science journals in September)

White Papers  
And Reports

*Managing Agricultural Water Use During Drought: An Analysis of Contemporary Policies Governing Georgia's Flint River Basin*, Georgia Water Policy Center Working Paper (2007), with Ronald Cummings, Mark Masters, Kristin Rowles and Douglas Wilson

*Clearing Up Murky Waters: Putting Georgia's Wetlands Protection Program into Perspective*, Georgia Water Policy Center Working Paper (2006), with Kristin Rowles

*Design Principles of a Cap-and-Trade System for Greenhouse Gases*, Nicholas Institute Whitepaper (2005), with Tim Profeta

*Greenhouse Gas Reduction Strategies in Utah: An Economic and Policy Analysis*, Utah Office of Energy and Resource Planning (1999), with Thomas Brill, Jamie Dalton, James Galanis, Susan Jancart and Glade Sowards

**TEACHING EXPERIENCE**

**Lecturing Fellow, Duke University Law School**

*Law 368, Natural Resources Law and Policy* (Fall 2007)

Designed course curricula, will teach class unassisted and grade all assignments and tests.

**Adjunct Professor, University of Utah**

*Political Science 6230, Administrative Law* (Spring 2005)

Designed course curricula, taught class unassisted and graded all assignments and tests.

**Teaching Assistant to Jim Salzman, Duke University School of Law**

*Law 235, U.S. Environmental Law and Policy* (Fall 2005 and Fall 2006)

Taught occasional lectures to class (80+ students) and graded papers and tests.

**Teaching Assistant to Erika Weinthal, Duke University**

*Environment 274, Resource and Environmental Policy* (Spring 2006)

Taught weekly discussion session and graded papers.

**Teaching Assistant to Dale Jamieson, Stanford University**

*Science Technology Society 110, Ethics and Public Policy* (Winter 2001)

Taught two weekly discussion sessions and graded papers and tests.

## **PROFESSIONAL EXPERIENCE**

- Private Consulting Work**, Durham, North Carolina (Sept. 2005-present)
- Nicholas Institute at Duke University* (Oct. 2005- present)  
*Project Director /Researcher*: Project director for the Institute's state climate policy project, which provides technical and policy support to states considering regulating greenhouse gases. Additional research with the Institute has focused on policy options and challenges of regulating greenhouse gases, including institutional design, constitutional barriers, and international climate/trade harmonization.
- Georgia Water Policy & Planning Center* (May 2006-June 2007)  
*Consultant*: Research focused on Georgia's policy options regarding dealing with water scarcity, state water law, and statewide wetlands protection programs.
- Holland & Hart, LLP* (Oct. 2005-Mar. 2006)  
*Contract Attorney*: Assisted in preparation for environmental litigation.
- Snow Jensen & Reese* (May-Aug. 2006)  
*Contract Attorney*: Provided land use advice to municipalities and assisted in property and land use litigation.
- United States Federal District Court**, Salt Lake City, Utah (Sept. 2004-Sept. 2005)  
*Judicial Clerk for the Honorable Ted Stewart, District of Utah.*
- Parsons Behle & Latimer**, Salt Lake City, Utah (May 2003-Aug. 2004)  
*Associate Attorney*: Member of the firm's Environmental and Litigation Departments; focused on environmental and land use litigation and regulatory compliance. Recognized for my pro bono efforts at the firm by being named one of twenty-five "Utah Elite Pro Bono Lawyers for 2005" by *Utah Business Magazine*.
- Stanford University**, Palo Alto, California (Sept. 2002-May 2003)  
*Research Assistant for Professor Tino Cuéllar.*
- Utahns for Better Transportation**, Salt Lake City, Utah (June 2000-May 2001)  
*Fulltime Law Clerk*: Assisted in litigation efforts surrounding a proposed highway (on leave from law school for school year).
- Utah Sierra Club**, Salt Lake City, Utah (Sept. 2000-Sept. 2001)  
*Executive Board Member; Political Compliance Officer*
- University of Utah**, Salt Lake City, UT (Sept. 1998-Sept. 1999)  
*Research Assistant for Dean Steve Ott and Professor Jim Gosling*
- Utah Department of Natural Resources**, Salt Lake City, Utah (Feb. 1998-Sept. 1999)  
*Economic and Policy Analyst*: Researched policy issues relevant to environmental, natural resources, and energy policy, including state greenhouse gas reduction strategies, federal lands disputes, and the prospect of electrical deregulation.
- Salt Lake County**, Salt Lake City, Utah (June 1994-Sept. 1997)  
*County Commission Assistant*: Analyzed policy alternatives and organized volunteer projects.

## **RESEARCH AGENDA**

### Research

My primary research focus is on the political economy of regulation. My course of study and research have sought to combine the insights and tools of the social sciences with my interest in environmental, natural resources, administrative, property, and land use law. The papers I have written to date, as well as my dissertation (which I expect will be completed by May 2009), explore the following questions: What roles do formal and informal institutions play in shaping political outcomes, and how do these outcomes affect the environment? How do different property rights regimes emerge, and what consequences follow from these differences? How can the literature surrounding the commons be applied in novel ways and generally improved? How do organizational, symbolic, and interest group politics influence agency activities?

While I expect that environmental issues will remain my primary research focus going forward, I hope to write in two other, related, areas as well. The first is the regulation of politics, in particular campaign financing, lobbying, ethics rules, and redistricting. The second is legal ethics. In addition to the formal legal ethics rules that govern lawyers and judges, I hope to evaluate how judges and state bars have used informal norms to regulate behaviors as well. An example of this is the various attempts to shame lawyers into cooperating with and showing civility to adversary parties during litigation.

### Teaching

My primary teaching interests are in environmental and natural resources law and policy, administrative law, property, legal ethics, land use law, and energy law. I would enjoy teaching seminars on Congress, public policy analysis, and social science and the law.

### Publications: Articles

***Emerging Commons and Tragic Institutions***, 37 ENVIRONMENTAL LAW 515 (forthcoming 2007)

The most prominent solutions to the tragedy of the commons have focused on building and maintaining stable institutions. This article reexamines stability by focusing on its costs. When values change, stable institutions that once made perfect sense become rigid barriers that block progress. To ground theory in practice, the article examines three case studies: the United States' governance of the radio spectrum, the founding of Yellowstone National Park, and western water law. The article then proposes a set of principles to help us overcome institutional rigidity. For decades, commons scholarship has focused on the tragedy of overuse. This article re-frames the commons debate, taking into account not only the benefits of stable institutions but also their costs.

***California, Climate Change and the Constitution***, 37 ENVIRONMENTAL LAW REPORTER 10,653 (forthcoming 2007), with Erwin Chemerinsky, Brett Hardy, Tim Profeta, Chris Schroeder, and Neil Siegel

In 2006, California became the first state to pass a law to regulate greenhouse gases broadly across its economy. A growing number of states have since followed

California's lead and have acted with the hopes of reducing the threats of climate change. Lurking beneath the challenge of how states might address what is perhaps the most significant environmental problem facing this generation are the constraints imposed on states by the Constitution. This article identifies two constitutional limitations the may create stumbling blocks for California and other states attempt to address climate change: the dormant Commerce Clause and the executive's dormant foreign relations power. The article provides California and other states with a road map of how to minimize litigation risks posed by the Constitution.

***Reviving Zion in a Sea of Sprawl: Revisiting Nineteenth-Century Mormon Urban Planning***, 28 JOURNAL OF LAND, RESOURCES, AND ENVIRONMENTAL LAW \_\_\_\_ (forthcoming 2007)

In the nineteenth century, Mormons planned and built hundreds of communities throughout the West. Time, growth, and redevelopment have begun to erase this history. Like towns and cities across the country, places first settled by Mormons now grapple with challenges associated with urban sprawl. This article explores whether this bold planning effort that permeated the frontier of Old West of the nineteenth century has any lessons to offer those grappling with the planning challenges facing the New West of the twenty-first century.

***Is That a Loophole or a Noose? How Congress Assured Neglect of Rural America's Arsenic-Tainted Tap Water***, with Erika Weinthal and Blake Hudson (draft available upon request, to be submitted to political science journals this fall)

The Safe Drinking Water Act (SDWA), passed in 1974, carves out nearly half of rural Americans from the Act's obligation and protections. Since the passage of the SDWA, science has uncovered risks posed by naturally occurring arsenic and has documented the presence of arsenic in many exempted water systems. This new information presents a puzzle: why has Congress failed to update the SDWA and respond to the scientific discoveries? Conventional political science theory suggests that effective congressional oversight depends on Congress creating passive oversight mechanisms (i.e., citizen suits and opportunities for constituent feedback). In examining Congress's treatment of naturally occurring arsenic, we identify a case where Congress had, in fact, created sufficient tools to detect a serious problem but, having identified it, nevertheless failed to respond. In exploring Congress's inaction, we find something unexpected: the structure of the SDWA has created incentives for those regulated and those exempted by the SDWA to pressure Congress to keep exempted water systems unregulated. This has made it difficult for Congress to address the threats facing many rural water systems. So, while Congress intended to create a loophole, it may have inadvertently tied a noose.

Publications: White Papers and Reports

***Managing Agricultural Water Use During Drought: An Analysis of Contemporary Policies Governing Georgia's Flint River Basin***, Georgia Water Policy Center Working Paper (2007), with Ronald Cummings, Mark Masters, Kristin Rowles and Douglas Wilson

Beginning in 1980s, the Georgia legislature stepped in repeatedly to codify and revise the state's water law in order to monitor, authorize, and bring water use in line with water

supply. Over the past decade the demand for water has steadily increased, at the same time that Georgia has faced extended and severe droughts. This is particularly the case in the Flint River Basin near Atlanta. Given the constraints on water supply, this whitepaper explores the extent to which changes to water law have altered water rights. The common perception among water users is that more senior water users have stronger water rights. The whitepaper concludes that seniority has much less influence than most water users believe and that regulators and courts in resolving ambiguities in the law could further undermine the claims of senior permit holders.

***Clearing Up Murky Waters: Putting Georgia's Wetlands Protection Program into Perspective***, Georgia Water Policy Center Working Paper (2006), with Kristin Rowles

While the federal government has generally taken the lead on wetlands policy, many states have added their own protections. This paper seeks to contrast Georgia's wetlands protection programs with those of surrounding states and to present Georgia's policymakers an array of options for increasing protections of its wetlands resources.

***Design Principles of a Cap-and-Trade System for Greenhouse Gases***, Nicholas Institute Whitepaper (2005), with Tim Profeta

Until recently, the question of regulating greenhouse gases was a question for nations. Over the past few years an increasing number of states and municipalities have shown an interest in grappling with climate change. This paper attempts to help states, and specifically California, to formulate an effective cap-and-trade program by highlighting the most important design features and the tradeoffs associated with policy alternatives.

***Greenhouse Gas Reduction Strategies in Utah: An Economic and Policy Analysis***, Utah Office of Energy and Resource Planning (1999), with Thomas Brill, Jamie Dalton, James Galanis, Susan Jancart and Glade Sowards

This report explores Utah's technological options for mitigating greenhouse gases. The report estimates the costs and potential environmental benefits of pursuing any of these options, individually or in concert with others.

Articles in Progress

***When Agencies Go Nuclear: A Game Theoretical Approach to the Biggest Sticks in the Regulatory Arsenal*** – in draft

On occasion, Congress provides agencies with unusually large sticks to wield—often referred to as “nuclear options.” This article explores the extent to which game theory (particularly the theory developed by Thomas Schelling that explains how countries use nuclear armaments) helps explain decisions to deploy or threaten to deploy these extreme agency powers. The article answers two central questions: How do agencies use these powers? And why would Congress provide agencies such extreme powers in the first instance? By applying game theory to a number of regulatory programs, the article shows that game theory provides a robust tool for understanding the strategic value of these extreme regulatory powers.

***Breaking Commons Cartels*** – in draft

This is a companion piece to my previous article, *Emerging Commons and Tragic Institutions*. A number of scholars, particularly Ostrom, Gardner, and Walker have used game theory to explain the power of institutions to address the tragedy of the commons. Using this conventional game theory as starting point, the article extends the theory and illustrates a dark side of institutional stability—its ability to hold emerging values hostage.