

# Festschrift in Honor of University of Idaho Distinguished Professor Emeritus Dale Goble

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## I. INTRODUCTION

Emeritus Distinguished Professor Dale D. Goble pursued a J.D. in law at the University of Oregon after completing an A.B. in philosophy at Columbia College. He began his career in law with the honors program at the US Department of the Interior. He remained at Interior for two years following the two-year honors stint during which time James Watt became Secretary of the Interior. Dale and his new boss did not see eye to eye on the law governing the conservation of species and public lands. Interior's loss was the University of Idaho's gain. Dale taught and mentored the students of the University of Idaho for thirty-six years prior to his retirement in 2017.

At the University of Idaho, Dale achieved the rank of University Distinguished Professor and the Margaret Wilson Schimke Distinguished Professor of Law. He was an adjunct faculty member of the Environmental Science, Bioregional Planning, Philosophy, and Water Resources Faculties. Externally he was also a Member Scholar at the Center for Progressive Reform. At the College of Law, Dale's quest to insert as many cases as possible with potatoes into the Torts curriculum led to the student-created label of "Tater Torts."<sup>1</sup> Dale taught Tater Torts to over fifteen hundred students from 1982 to 2017 and was truly instrumental in shaping torts law in Idaho.

While Tater Torts remained an internal favorite at the College of Law, Dale became known externally and internally for his teaching in Public Land Law and for his teaching, casebook development,<sup>2</sup> and scholarship in the field of Wildlife Law. In the words of his casebook collaborator Professor Eric Freyfogle, Research Professor and Swanlund Chair Emeritus at the University of Illinois at Urbana-Champaign, "Dale is the father of Wildlife Law."<sup>3</sup> Dale and Professor Freyfogle developed a book that brings together state law governing game management, conservation and take with federal and international law focused on species protection under the heading of Wildlife Law to provide a more complete curriculum on biodiversity conservation, management and take.

I had the privilege of learning from and laughing with Dale Goble as his mentee, colleague, Associate Dean, and friend at the College of Law from 2004 to his retirement in 2017. It is an honor and a privilege to provide this introduction to

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1. Statement of Professor and former student of Dale Goble's Melinda Harm Benson at the gathering to celebrate the scholarship of Dale that resulted in this Festschrift, November 1, 2019, Boise, Idaho.

2. Dale D. Goble, Eric T. Freyfogle, Eric Biber, Fred Cheever, and Annecoos Wiersema, *Wildlife Law: Cases and Materials*, Third Edition, University Casebook Series (Foundation Press NY NY 2017). The first and second edition of *Wildlife Law* were co-authored by Dale D. Goble and Eric T. Freyfogle.

3. Statement of Professor Eric Freyfogle at the gathering to celebrate the scholarship of Dale that resulted in this Festschrift, November 1, 2019, Boise, Idaho.

the volume of the Idaho Law Review celebrating Dale's many contributions to scholarship. Part II will introduce the contributions to this volume from collaborators, former students, and colleagues influenced by the scholarship of Dale Goble. Part III will highlight Dale's contributions to the development of interdisciplinary education at the College of Law that crossed the disciplinary divide between the sciences and law. The article will conclude with a thank you to Dale for all he has done for the University of Idaho College of Law, our students, and the field of wildlife law.

## II. THE TRIBUTES TO THE SCHOLARSHIP OF EMERITUS UNIVERSITY PROFESSOR DALE D. GOBLE

*Eric Biber – Edward D. Halbach Jr. Professor of Law, University of California  
Berkeley*

### A SURVEY OF STATE WILDLIFE AND ENDANGERED SPECIES PROTECTIONS

Professor Eric Biber writes about the initial study Dale Goble helped lead on state endangered species acts and how important this overlooked area of conservation biology and biodiversity law has become in the face of federal gridlock. He highlights Dale's role as a mentor and influence on his own work that has led to a much more far-reaching study to identify any state wildlife law that may play a role in the conservation of species. Professor Biber's article presents the initial results of that study revealing some surprises. His continuing analysis of these data and his work in this area assures that the legacy of Dale Goble will continue.

*Dan Tarlock – Emeritus Professor at Chicago-Kent College of Law*

### THE "EMPTY" AMERICAN WEST AS URBAN HINTERLAND

Emeritus Professor Dan Tarlock is a giant in my field of water law. Here he writes about the changing face of the American West and honors Dale Goble's contributions to biodiversity conservation. Dan proposes a new vision of the western landscape with four (often competing) functions. First in Professor Tarlock's functions of an American Hinterland is biodiversity conservation. Second, is to adjust the linkage across the urban and non-urban West to enhance capacity to adapt to climate change. Third, is to remove the western "myths" that hinder adjustment of legal regimes to meet modern economic and social trends. Fourth, is to address the problems of social inequity in both the urban west and its hinterland.

*William L. Andreen – Edgar L. Clarkson Professor of Law at the University of  
Alabama School of Law*

### SEPARATING FACT FROM FICTION IN EVALUATING THE ENDANGERED SPECIES ACT: RECOGNIZING THE NEED FOR ONGOING CONSERVATION MANAGEMENT AND REGULATION

Professor Andreen highlights the contribution of Dale Goble and his colleagues to the recognition that few species can be delisted under the Endangered Species Act without ongoing efforts to prevent a repeat of their decline. He credits Goble and his co-authors for coining the term “conservation reliant species.” Professor Andreen addresses the controversy the notion of conservation reliant species raised, noting that the concept of ongoing regulatory need makes perfect sense to a pollution lawyer. He calls for a more realistic measure of success of the ESA, and a more long-term view of the sustainable management of the survival of species.

*Robert Keiter – Wallace Stegner Professor of Law, University of Utah College of Law*

#### LANDSCAPE CONSERVATION, WILDLIFE MANAGEMENT, AND THE FEDERAL PUBLIC LANDS: A PRIMER

Professor Keiter turns to Dale Goble’s contributions to landscape conservation noting that:

*Landscape conservation is now widely acknowledged as the basis for effective wildlife management. As Professor Goble and colleagues put it in their groundbreaking study of the Endangered Species Act, “[w]e have come to realize the importance of landscape-scale patterns and processes, greatly extending the relevant space and time scales for effective conservation.” Landscape conservation seeks to address the problem Professors Goble and Freyfogle subsequently identified as the “tragedy of fragmentation.” [citations omitted]*

Professor Keiter turns to the emergent concept of landscape conservation efforts that include public and private lands as one means to address fragmentation. He notes their foundation in science, and the involvement of non-governmental entities to catalyze these efforts. He considers the basis for institutionalizing these efforts in law and calls for more targeted use of state and federal land use planning and funding mechanisms to protect habitat connectivity across fragmented landscapes.

*Carmen Thomas Morse – U.S. Department of the Interior’s Office of the Solicitor in Portland, Oregon*

#### DALE GOBLE: A “SIGNIFICANT” CONTRIBUTOR TO ENDANGERED SPECIES ACT SCHOLARSHIP

Professor Goble’s former student, Carmen Thomas Morse, now attorney with the U.S. Department of the Interior, writes about Dale’s contribution to scholarship on the Endangered Species Act. As her mentor, Dale taught her the art of deep analysis of the ESA and one informed by science. Carmen Thomas Morse goes on to analyze the unsettled and shifting landscape of the courts’ interpretations of the language in the ESA defining a species as endangered if it “*is in danger of extinction throughout all or a significant portion of its range* . . . [fn 16 USC 1532 (6) defining “endangered species.” The same phrase “significant portion of its range” also

appears in the definition of “threatened species” which “means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” 16 USC 1532 (20)]

*Melinda Morgan – Associate Professor, Department of Geography and Environmental Studies at the University of New Mexico*

#### CONSERVATION RELIANT SPECIES AS A BOUNDARY OBJECT FOR TRANSDISCIPLINARY ENGAGEMENTS

Dale’s former student, Melinda Morgan, now W.K. Kellogg Chair and Director of Sustainability Studies Program at the University of New Mexico writes that the creation of the concept of Conservation Reliant Species (CRS) by Dale Goble and his colleagues moved the thinking about species from a binary focus on endangered versus recovered, to a continuum that recognizes the actual management needs of species. She then turns to the concept of CRS as a means to enhance dialogue across disciplines and among experts, regulators and the public engaged in species conservation. Her time as Dean of the Haub School of the Environment and Natural Resources at the University of Wyoming gave her a unique perspective on the need to integrate research, teaching and outreach and a new appreciation for interdisciplinary and transdisciplinary efforts. As a student of Dale Goble, Professor Morgan is one of the many students whose training at the intersection of law and science has made a difference beyond the halls of the UI College of Law.

*Dr. Michal Scott – Emeritus Distinguished Professor of Wildlife at the University of Idaho*

*Dr. Beatrice Van Horne – led the Northwest Climate Hub for the Department of Agriculture. Previously with the US Forest Service and US Geological Survey*

*Dr. John A. Wiens – Emeritus University Distinguished Professor at Colorado State University*

#### DALE GOBLE AS A BUILDER OF BRIDGES

Dale Goble’s long-time collaborator Dr. Michal Scott, along with their co-authors on their book *Shepherding Nature. The Challenge of Conservation Reliance*, Cambridge University Press (in press, 2020), Drs. Beatrice Van Horne and John A. Wiens, joined to write about Dale’s contributions as a builder of bridges across disciplines. The authors are prominent in the fields of wildlife and landscape ecology. As noted by the authors, this long-time collaboration recognized that today’s biodiversity problems require an application and integration of both law and science to solve. Yet deep understanding across the disciplinary divides is rare and according to the authors “the disciplines are separated by a ‘gulf of mutual incomprehension’.” They note that “Dale Goble has had a profound and lasting impact in bridging this gulf.”

The assumption of the relative stability of nature embodied in many natural resource and environmental laws and the quest for finality in judicial dispute

resolution is challenged by the adaptive and non-linear response of ecosystems to change. Dale worked to bring this reality to wildlife law as well as a scientific understanding to the interpretation of seemingly simple terms, like “species”. The authors summarize their recent work on conservation reliant species noting that 84% of the species listed under the ESA fit this term.

The authors conclude with these important words:

*It is asking too much for ecologists to become conversant with the intricacies of law and legal thinking or for legal scholars to feel comfortable with the uncertainty of ecological systems, in which everything may seem to be contingent on everything else. Neither the three of us nor Dale meets this goal. But our interactions have made us more aware, and more respectful, of the culture at the other end of the bridge. Addressing the challenges of conservation reliance, or of a host of broader environmental problems, will require more bridge builders like Dale. We need to develop a cadre of bridge-builders, conversant in their own disciplines but willing and eager to listen to, learn from, and collaborate with others to span that “gulf of mutual incomprehension.”*

### III. THE GOLDEN YEARS OF GRADUATE INTERDISCIPLINARY EDUCATION AT THE UNIVERSITY OF IDAHO

While this volume is focused on the scholarship of, and influenced by Dale Goble, as the quote above from the article in this volume by Scott, Van Horne and Wiens implies, Dale’s bridge building goes beyond scholarship to teaching and curriculum development. It is in this area that I worked most closely with Dale, thus I will conclude with his role in the “golden years” of graduate interdisciplinary education at the University of Idaho.

In addition to serving as the major advisor for five MS students in Environmental Science, and as a committee member for eighteen additional students, Dale Goble played an early role in the involvement of the College of Law in the development of interdisciplinary education at the University of Idaho. A 2005 report from the National Academies of Science states:

*Interdisciplinary thinking is rapidly becoming an integral feature of research as a result of four powerful ‘drivers’: the inherent complexity of nature and society, the desire to explore problems and questions that are not confined to a single discipline, the need to solve societal problems, and the power of new technologies.<sup>4</sup>*

Small public universities like the University of Idaho cannot be competitive nationally in all fields of research important to society. As a public, land grant and flagship university, it is charged with retaining core breadth for undergraduate education, serving the extension needs of Idaho and the region, and leading Idaho in research, graduate and professional education. To balance these needs in a state with a small population, UI can and does select areas in which to invest resources.

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4. National Academies of Science. 2005. Committee on Facilitating Interdisciplinary Research. Facilitating Interdisciplinary Research. The National Academies Press.

By targeting key interdisciplinary areas that enhanced the land grant mission during a period from 1993 to 2015, the University (1) spread excellence and thus enhanced recruitment potential for both faculty and students across multiple disciplines; (2) responded to the increasing opportunities for grant funding in interdisciplinary areas in response to major societal and planetary issues; and (3) responded to increased student and employer demand (with student enrollment in interdisciplinary majors nationwide increasing by 250% between 1975 and 2000 when overall enrollment nationwide increased by 18%).<sup>5</sup>

Following the founding of the Environmental Science Program (ENVS) led by Professor Emerita Margrit van Braun and colleagues in 1993, Dale worked with colleagues from other disciplines to create a concurrent JD/ENVS MS degree. The goal was to train problem solvers who can work at the law/science interface to solve some of the intractable problems that do not lend themselves to simple solutions. In short, to sow the seeds of the next generation lawyer.

The vision and success of this effort inspired some of us to create an interdisciplinary Water Resources Program and concurrent JD/MS and JD/PhD in Water Resources in 2007, a concurrent JD/Professional Science Masters in 2012 and a concurrent JD/MS in Bioregional Planning also in 2012. Not only did this effort leverage resources across the university to enhance programs offered by the College of Law, but the College began to see interest from a uniquely passionate and qualified type of student, and to see placement of those students in career paths formerly not available to graduates of the College (particularly opportunities in federal, tribal, and state government as well as NGO's).

Of equal importance, Law faculty began to work on the development of interdisciplinary grants, research and curriculum aimed at achieving the goal of exploring some of the major problems facing society. In addition to numerous multi-disciplinary and cross-college grants, faculty in the Environmental Science Program succeeded in obtaining a highly competitive National Science Foundation Interdisciplinary Graduate Education and Research Grant (IGERT) which provides direct funding to the training of over twenty Ph.D. students. This would be followed by a renewal of that grant and receipt of a new IGERT by the Water Resources Program.

These interdisciplinary programs at the University of Idaho are in their nadir as a result of changing priorities and university budgetary challenges. Nevertheless, the seeds sown in the students graduated and the transformation in research perspective of some faculty during the golden years are not lost. In their continued work, the legacy of Dale Goble and others lives on.

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5. National Academies of Science. 2015. Committee on the Science of Team Science, Cooke Nancy J. and Margaret L. Hilton eds. *Enhancing the Effectiveness of Team Science*. The National Academies Press; Crow, Michael M. and William B. Dabars. 2015. *Designing the New American University*. Johns Hopkins University Press; Frodeman, R., J.T. Klein, C. Mitcham, J.B. Holbrook 2010. *The Oxford Handbook of Interdisciplinarity*. Oxford University Press; Bammer, Gabriele ed. 2013. *Disciplining Interdisciplinarity: Integration and Implementation Sciences for Researching Complex Real-World Problems*. Australian National University E-Press; National Academies of Science. 2005. Committee on Facilitating Interdisciplinary Research. *Facilitating Interdisciplinary Research*. The National Academies Press.

#### IV. CONCLUSION

From the articles in this volume celebrating the scholarship of Emeritus Professor Dale Goble, there is no doubt as to the quality and impact of his work and its continuing effect on the scholarship of others. To add to that tribute, I would like to end on a personal note – a thank you to Dale.

Dale – Your stellar reputation is one reason I accepted a position at the University of Idaho College of Law. I was not disappointed. Your example in interdisciplinary research and education, and work to remove institutional barriers and prejudices, opened the door for me to pursue my own passions at the law/science interface and to personally witness the corresponding increase in the capacity of our students to solve client problems and to pursue their dreams. I consider you a mentor, colleague and friend. It has been a great ride. Thank you.

