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ESSAY

A Fish Tale: A Small Fish, the ESA, and our Shared Future 339
Dale D. Goble

The objective of the Endangered Species Act is to "recover" imperiled species and thus to render the Act's conservation tools unnecessary. To achieve this goal, the drafters of the Act crafted a linear process that begins with an assessment of the threats facing the species and moves through the elimination of those threats to the recovery and delisting of the species. It has become increasingly apparent over the past decade that few species fit this model: most species face threats—altered habitats and competition with invasive species—that cannot be eliminated but instead require ongoing management. These species are "Conservation-reliant" because they will require ongoing conservation management. This is a legal and management problem: Conservation-reliant species can be recovered biologically through management actions at the relevant scale, but delisting such species is problematic because to do so will deprive the species of the management required to maintain its numbers. To date, a handful of Conservation-reliant species have been delisted as recovered pursuant to management agreements that obligate a manager—a federal or state agency, a conservation organization, or a specially created management entity—to provide ongoing conservation management activities. These developments are examined in part by using the Borax Lake chub—a small fish endemic to a highly alkaline lake in eastern Oregon—as a continuing example of both how the Act was intended to operate and how it might be re-envisioned to achieve its recovery goals in a rapidly changing conservation landscape.

ARTICLES

Climate Change Adaptation and the Structural Transformation of Environmental Law 363
J.B. Ruhl

Only recently has the "adaptation deficit" become a concern actively included in climate change policy debate. Now that adaptation is a growing concern, however, numerous policy fronts will compete

simultaneously for primacy and priority as people demand protection from harms and enjoyment of benefits that play out as climate change moves relentlessly forward. This makes it all the more pressing for environmental law, early in the nation's formulation of adaptation policy, to find its voice and establish its place in the effort to close the adaptation deficit. Toward that purpose, this Article examines the context and policy dynamics of climate change adaptation and identifies ten trends that will have profound normative and structural impacts on environmental law.

Ahistorical Indians and Reservation Resources 437
Ezra Rosser

This Article uses the Navajo Nation's proposal to develop a coal-fired power plant to explore the economic, social, and regulatory challenges of Indian nations pursuing environmentally destructive forms of economic development. After presenting the heavy hand non-Indians have historically played when it comes to natural resource extraction on the Navajo Nation, the Article calls for the recognition, despite the romanticism that surrounds Indians and the environment, of tribal agency and responsibility for the proposed environmental destruction. Finally, the Article argues that by relying on federal review environmental organizations are complicit in the colonialism inherent in federal primacy, and therefore, environmental organizations' relationship with Indian tribes ought to be guided by international human rights law instead of federal environmental review processes.

Cities as Emergent Systems: Race as a Rule in Organized Complexity..... 551
Charles Lord & Keaton Norquist

Cities are perceived as chaotic and mysterious—beyond the ability of policymakers to shape and control. If the patterns of inequity in cities are the result of mysterious forces, then managing or governing for justice becomes impossible. Such perceptions have significant implications for governance, urban policy, justice, and equity in cities. This Article presents a method for understanding cities not as chaotic and mysterious, but as complex, emergent systems that are amenable to study and to management. Using Baltimore, Maryland, as an example, this Article argues that cities can modify the rules and the patterns in an urban system in the cause of justice.

BLM's Retained Rights: How Requiring Environmental Protection Fulfills Oil and Gas Lease Obligations 599
Bruce M. Pendery

There are approximately 39 million acres of federal mineral estate in the eleven western states subject to onshore oil and natural gas leases issued by the Bureau of Land Management. The leases grant the lessee the right to extract oil or natural gas that may be found on the lease. However, the leases make the grant of rights "subject to" a number of reservations of authority to the federal government. A review of these authorities shows BLM retains substantial rights, allowing it to regulate

the time, place, and manner of oil and gas development. This Article posits that given the mandatory nature of many of the authorities a federal onshore oil and gas lease is made subject to, not only does BLM have significant retained rights that allow it to protect the natural environment, it in fact has an obligation to assert them.

AMICUS BRIEF

Brief for Natural Resources Defense Council as Amici Curiae Supporting Respondent, Monsanto Co. v. Geertson Seed Farms, No. 09-475 (U.S. Apr. 5, 2010) 687
Craig Johnston

In equity, courts traditionally have had the power to issue injunctions in response to significant threats, regardless of whether the threatened harm was preponderantly likely to come to pass. In this context, the courts have taken into account both the likelihood of the threatened injury and the seriousness of its potential consequences in evaluating whether there was a sufficient likelihood of irreparable injury to warrant an award of injunctive relief. In *Monsanto*, which is a case brought under the National Environmental Policy Act (NEPA), the petitioner has argued that courts have no traditional equitable power to issue such injunctions unless the relevant harm is at least 51% likely to occur. This Amici Brief, filed with the Court on April 5, 2010, supports the ability of courts, in NEPA cases, to award injunctive relief in cases in response to significant environmental threats even where the harm may not be preponderantly likely to occur.

COMMENT

Getting to Here: Bioregional Federalism..... 713
Wes Nicholson

Environmental problems, which are byproducts of a market economy that is a complex, self-organizing system, may be best policed by a complex, self-organizing system. Bioregional Federalism may provide the systemic basis for self-organizing environmental policy. Finally, a thought experiment explores how Bioregional Federalism might be achieved.