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ESSAY

Toward a New System of Environmental Regulation: The Case for an Industry Sector Approach

Daniel J. Fiorino

Mr. Fiorino is the Director of the Industry Strategies Division of the U.S. Environmental Protection Agency Office of Policy Development. He examines the current federal regulatory scheme for controlling industrial pollution and identifies structural flaws that are impeding further progress. Mr. Fiorino advances alternative approaches based on performance across industry sectors or facilities. Recent EPA initiatives and other models illustrate how a more flexible and integrated system of environmental regulation may be developed.

ARTICLES

Future prospects for Mining and Public Land Management: The Federal "Retention-Disposal" Policy Enters the Twenty-First Century

Philip F. Schuster, II & Roger F. Dierking

Messrs. Schuster and Dierking, lead plaintiffs' counsel in the landmark mining access case *Clouser v. Espy*, engage in a comprehensive analysis of mining access issues as they relate to federal and state public land management. The authors establish the history of federal land retention-disposal policies and the hard rock mining experiences as a useful "window" for guiding future public land management policy. The authors offer an innovative cooperative federalism approach for improving environmental management and eliminating conflict between federal and state governments within the federal retention-disposal framework.

The Continuing Nature of Notification Violations Under Environmental Statutes

Roger M. Klein

Professor Klein addresses the often-conflicting judicial and administrative interpretations regarding violations of notification provisions within environmental statutes. He contends that the proper view of notification provisions is that violations continue indefinitely until notice is provided to the proper authority.

Coping With Change: Energy, Fish, and the Bonneville Power Administration

Timothy A. Johnson

Mr. Johnson, an attorney with the Bonneville Power Administration (BPA), explores the significant challenges facing BPA in light of increased industry competition following the Energy Policy Act of 1992 and uncertain salmon recovery costs following recent court decisions. Mr. Johnson concludes that BPA's new market-oriented philosophy, in concert with the Clinton Administration's recent cap on BPA's salmon recovery expenditures, will enable BPA to effectively compete in the power market and continue to satisfy its statutory environmental and power obligations.

SALVAGE LOGGING: POINT & COUNTERPOINT

Forest Health and the Politics of Expediency

Michael Axline

In the summer of 1995, Congress attached a now-notorious salvage logging rider to an emergency appropriations bill. Professor Axline criticizes the salvage logging rider as poor policy and a

violation of proper congressional procedure. Recognizing the dual needs for a sound Northwest economy and healthy national forests, Professor Axline concludes that the salvage logging rider fails to achieve either objective and may instead frustrate both of them.

Legislative History of the Timber and Salvage Amendments Enacted in the 104th Congress in the Pacific Northwest

U.S. Senator Slade Gorton & Julie Kays

U.S. Senator Slade Gorton and his natural resources legislative assistant, Julie Kays, discuss the purpose and scope of the salvage logging rider. Responding to Professor Axline's criticisms of the salvage logging rider, they explain that its purposes are to restore forest health and jobs in timber communities.

COLLOQUIUM: THE SECOND ANNUAL "WHO RUNS THE RIVER?" COLLOQUIUM

Sponsored by the Northwest Water Law & Policy Project of Northwestern School of Law of Lewis & Clark College

On October 27, 1995, the Northwest Water Law & Policy Project of Northwestern School of Law of Lewis & Clark College held a second annual colloquium on issues affecting Columbia River salmon. The focal points for last year's colloquium were two federal court decisions, *Northwest Resource Information Center v. Northwest Power Planning Council* and *Idaho Department of Fish & Game v. National Marine Fisheries Service*, which held that the federal agencies responsible for running the river had violated the Northwest Power Act and the Endangered Species Act. This year's colloquium focused on the agencies' attempts to respond to the court decisions and improve conditions for salmon survival.

These Articles are adaptations of remarks delivered at the colloquium.

Salmon Law and Policy in 1995: A Brief Overview

Michael C. Blumm, Northwestern School of Law of Lewis & Clark College

Rethinking the Federal Role in a Competitive Electric Market

Al Alexanderson, Portland General Electric

Salmon Recovery Plans: Some Fundamental Choices

Ken Casavant, Northwest Power Planning Council

Restructuring the Northwest Power System

Roy Hemmingway, Salmon Policy Advisor to Oregon Governor John Kitzhaber

1995 River Operations Under the Endangered Species Act: Continuing the Salmon Slaughter

Charles Ray, Idaho Rivers United

One Tribe's Perspective on "Who Runs the Reservoirs"

Don Sampson, Chairman, Board of Trustees, Confederated Tribes of the Umatilla Indian Reservation

NOTES

Katie John v. United States: Redefining Federal Public Lands in Alaska

Joan M. Nockels

Ns. Nockels analyzes the Ninth Circuit's majority and dissenting opinions in *Alaska v. Babbitt*, the official name for what is referred to in Alaska as the *Katie John* dispute. She argues that the majority opinion should have held that waters in which the United States holds a navigational servitude are "federal public lands" to which the Alaska National Interest Lands Conservation Act's rural subsistence priority must attach. Absent that finding, she concludes that an administrative solution will rectify the court's errors.

Streamlining EPA's NPDES Permit Program With Administrative Summary Judgment: Puerto Rico Aqueduct & Sewer Authority v. Environmental Protection Agency

R. Cammon Turner

Mr. Turner contemplates the EPA's use of administrative summary judgment within the specific context of requests for evidentiary hearings to review National Pollutant Discharge Elimination System permit terms under the Clean Water Act. He approves of the EPA's evidentiary threshold standard, which is similar to that found in Federal Rule of Civil Procedure 56, but cautions against continued use of the standard without some fine-tuning. He suggests improvements for the procedure and concludes that it is a positive time-saving device.