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ARTICLES

**Property as a Public Conversation, Not a Lockean Soliloquy: A Role for Intellectual and Legal History in Takings Analysis**

*Myrl L. Duncan*

Professor Duncan argues that John Locke's individualistic theory of property, currently being advocated by conservative commentators, is a vestige of seventeenth-century science that cannot be reconciled with modern knowledge that nature is an interconnected whole.

**Assessing the Fitness of Novel Scientific Evidence in the Post-*Daubert* Era: Pesticide Exposure Cases as a Paradigm for Determining Admissibility**

*Erin K.L. Mahaney*

In the wake of the Supreme Court's opinion in *Daubert v. Merrell Dow Pharmaceuticals*, federal courts must conduct a two-step analysis under Federal Rule of Evidence 702 to determine the admissibility of scientific expert testimony. Ms. Mahaney examines the less-analyzed second prong of this admissibility calculus--the fitness requirement. She focuses on the special fitness problems that arise in using novel scientific evidence in pesticide exposure cases, suggesting several devices to facilitate admission of such evidence and to simplify the judge's role as evidentiary gatekeeper.

**The Relationship Between "Permanent Sovereignty" and the Obligation Not to Cause Transboundary Environmental Damage**

*Franz Xavier Perrez*

Mr. Perrez questions whether the notion of a nation-state's permanent sovereignty over natural resources is incompatible with the international law principle that a nation should not cause transboundary pollution. After examining the parameters of both principles, the author identifies three distinct limitations on the right to permanent sovereignty over natural resources. Those limitations suggest that permanent sovereignty, rather than constituting an absolute right, actually includes a duty not to cause transboundary pollution.

**Enforcement of Environmental Law and United States and European Law: Realities and Expectations**

*Sevine Ercmann*

Dr. Ercmann suggests alternative methods of environmental enforcement based on recent developments in the United States and Europe. She reports that the traditional command-and-control approach to environmental regulation is giving way to innovative means of enforcement, such as eco-contracts and environmental auditing. The Article concludes that these new methods have generally produced successful results.

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COMMENTS

**State Environmental Audit Privilege Laws: Can EPA Still Access Environmental Audits in Federal Court?**

*Christina Austin*

Ms. Austin contemplates the effects that state-created evidentiary privileges protecting environmental audits will have on EPA's ability to access those audits in federal court. Based on the evolution of privilege law following the adoption of Rule 501 of the Federal Rules of Evidence and the judicial system's reluctance to create new privilege laws, she concludes that state privilege laws should not be honored by federal courts when EPA seeks access to environmental audits.

**Equal Footing, County Supremacy, and the Western Public Lands**

*Paul Conable*

Mr. Conable examines the movement that seeks to eliminate federal public land ownership and transfer those lands back to the states. He concludes that the arguments advanced by the "county supremacist movement" supporters are not compelling enough to warrant further examination by federal courts, which have already resolved many of the major issues.

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## NOTE

***Alaska Wilderness v. Morrison: The Return of Reasonableness to NEPA Review?***

*Jennifer L. Byrne*

The Supreme Court announced in *Marsh v. Oregon Natural Resources Council* that the standard of review for challenges to agency decisions not prepare environmental impact statements would be arbitrary and capricious. Based on the Ninth Circuit decision in *Alaska Wilderness Recreation and Tourism Ass'n v. Morrison*, Ms. Byrne argues, however, that the reasonableness standard may still be a viable standard of review in certain NEPA cases. Ms. Byrne concludes that plaintiffs who can frame their challenges as disputes over legal issues rather than factual issues may be able to distinguish *Marsh*, and thus qualify for a more stringent reasonableness review of the agency's action.

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## BOOK REVIEW

**Biodiversity and the Law**

*Richard L. Blaustein*

The earth's biodiversity is rapidly disappearing. This environmental crisis is the subject of *Biodiversity and the Law*, a collection of writings edited by William J. Snape III. In Mr. Blaustein's book review, he argues that the law, if properly applied, could potentially stop the biodiversity "extinction," and protect the earth's biodiversity for future generations.