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ARTICLES

The Constitutional Rights of Nonsettling Potentially Responsible Parties in the Allocation of CERCLA Liability

Christopher D. Man

Mr. Man, an associate with the Washington, D.C. office of Hunton & Williams, examines the Comprehensive Environmental Response, Compensation, and Liability Act's liability provisions and settlement process, and argues that denying nonsettling parties their right to seek further contribution from other Potentially Responsible Parties violates the Due Process Clause of the Fifth Amendment. In addition to suggesting alternatives to the current liability and settlement schemes, he suggests that nonsettling party interests should be reexamined, and posits that nonsettling parties deserve additional safeguards to protect their constitutionally guaranteed due process rights.

Keeping Pigs Out of Parlors: Using Nuisance Law to Affect the Location of Pollution

Andrew Jackson Heimert

Mr. Heimert discusses environmental regulations through nuisance law and compares this type of pollution regulation to the modern antipollution statutes, which he argues do not provide locational incentives. He then argues that nuisance law retains an advantage over existing statutory regimes in that it addresses harms created by pollution and can thereby provide incentives to locate so as to mend the harms polluters create. Because of this advantage, Mr. Heimert concludes that state nuisance law is not preempted by federal statutes and should be utilized to supplement current environmental laws.

Reforming Livestock Grazing on the Public Domain: Ecosystem Management-Based Standards and Guidelines Blaze a New Path for Range Management

Bruce M. Pendery

In 1995, the Bureau of Land Management (BLM) amended livestock grazing regulations on public lands based largely upon a final environmental impact statement entitled *Rangeland Reform '94*. These amendments broke from the previous method that had been traditionally used by the BLM for administering grazing permits by establishing new administrative standards and guidelines that embrace some of the ecosystem management-based standards published by the National Research Council. Mr. Pendery details the rulemaking effort used to develop the new regulations, including a review of the legal history behind public land grazing and summarizations of the modern-day arguments between range scientists, ranchers, and environmentalists.

COMMENTS

Breaking the Trail of Broken Promises: "Necessary" in Section 810 of ANILCA Carries Substantive Obligations

Dan Cheyette

Mr Cheyette examines the U.S. Forest Service's subsistence management policies for the Tongass National Forest in light of section 810 of the Alaska National Interest Lands and Conservation Act, which requires federal land management agencies to consider subsistence resources in all land use decisions. He concludes that the Forest Service has ignored the substantive requirements of the statute by managing the Tongass for timber harvesting to the detriment of subsistence resources. Mr. Cheyette argues that until the Forest Service creates a new management plan that considers equally all resources of the Tongass, the courts must enjoin timber sales that adversely impact subsistence resources.

Eliminating the National Forest Management Act's Diversity Requirement as a Substantive Standard

Julie A. Weis

Ms. Weis considers the U.S. Forest Service's treatment of the biodiversity standards of the National Forest Management Act (NFMA). After noting that courts have generally been highly deferential to the Forest Service's approach to biodiversity, she addresses recently proposed changes to NFMA rules, and concludes that these changes would further reduce biodiversity protections under the statute.

A Case for the Extension of the Public Trust Doctrine in Oregon

Scott B. Yates

Mr. Yates argues that Oregon should apply the public trust doctrine to state water allocation decisions to prevent harm caused to navigable waters by the diversion of water from nonnavigable tributaries. He examines Oregon's public trust case law and water code within the analytical framework utilized by the California Supreme Court in *National Audobon Society v. Superior Court of Alpine County*, and concludes that Oregon law supports extending the public trust doctrine into the appropriation context.

REMARKS

Reflections on the Role of Courts in Environmental Law

Lois J. Schiffer & Timothy J. Dowling

These remarks were delivered by Ms. Schiffer on October 9, 1996 in Portland, Oregon at the "Federal Judges Environmental and Natural Resources Law Seminar" sponsored by the Federal Judicial Center and the Northwestern School of Law at Lewis & Clark College. Using Lady Justice as a unifying theme, Ms. Schiffer explores the role of federal courts in the development of environmental law and examines emerging environmental issues that federal courts face today.

ESSAY

The Case of the Speluncean Polluters: Six Themes of Environmental Law, Policy, and Ethics

J.B. Ruhl

If the fate of the planet were to depend on the approach to environmental law society chooses, which approach would you suggest? In Professor Ruhl's essay, the time when society faces that question is delayed for over two millennia by the discovery of a remarkable substance. But the day of reckoning comes in 4310

A.D., when the Supreme Court offers its opinion in a case we can only hope never arises in reality.