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ARTICLES

**Wetlands, Waterfowl, and the Menace of Mr. Wilson: Commerce Clause Jurisprudence and the Limits of Federal Water Regulation**

*Jonathan H. Adler*

Federal wetlands regulation under section 404 of the Clean Water Act has been one of the most contentious areas of federal environmental policy for the past several years. The author assesses the extent to which the Commerce Clause doctrine explicit and implicit in *United States v. Lopez* limits the federal government's authority to regulate wetlands. Currently the circuits are split on the question of whether Congress can regulate isolated wetlands. The author concludes that limiting the federal government's ability to regulate wetlands need not have dire consequences for wetland protection and there is substantial reason to believe that reimposing constitutional limits on federal regulatory authority may improve environmental protection efforts.

**1998-The Year in Review**

*Craig N. Johnston*

This Article discusses several troubling environmental case-law developments of 1998. Part II contains an analysis of significant decisions regarding standing and mootness as applied to citizen suits, the invalidation of the Tulloch rule, and operator liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Part III addresses other notable decisions affecting the Clean Water Act, CERCLA, the Endangered Species Act, and environmental enforcement.

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INTERNATIONAL ENVIRONMENTAL SYMPOSIUM

**The Environmental Impacts of International Finance Corporation Lending and Proposals for Reform: A Case Study of Conservation and Oil Development in the Guatemalan Petén**

*Ian A. Bowles, Amy B. Rosenfeld, Cyril F. Kormos, Conrad C.S. Reining, James D. Nations, and Thomas Ankersen*

This Article presents a case study of lending by the International Finance Corporation (IFC), the private-sector lending arm of the World Bank Group, in the oil and gas sector in Guatemala. The case study emphasizes the need for additional environmental reform at IFC. With two separate loans in 1994 and 1996, IFC supported the activities of a small international oil company that was operating within a national park in the northern Guatemalan Petén, an area of rich tropical forests and globally important wetlands. The company's operations had been "grandfathered" into the park upon its creation in 1990. Funding from IFC was used to construct a pipeline from the oil field in the park to a refinery outside of the park. The crux of the authors' findings is that the pipeline should have been constructed to follow the path of an existing road, rather than along the chosen route that crosses significant stretches of primary tropical forest and that opened a new right-of-way into a park already facing continued pressure from colonization. The authors conclude that a stronger set of IFC lending policies, combined with a better environmental impact assessment and more extensive public consultation, would have led to a less environmentally damaging outcome. Although the authors acknowledge the complex questions about the role of governments, development agencies, the private sector, conservation organizations, and local communities raised by this issue, they focus on the narrow subject of IFC's role in this matter, stressing the need for a reform agenda at that institution.

**Environmental Controls in Vietnam**

*Tannetje Bryant and Keith Akers*

This Article provides a critique of the post-1992 Vietnamese legislative regime on environmental protection. In particular, it outlines the policy background and governmental administrative

framework behind this regime; gives a detailed analysis of the environmental impact evaluation procedures; analyzes various compliance mechanisms such as warnings, fines, compensation, and rectification; and examines preventative mechanisms of a nonlegal kind, such as training, manpower, and public education. In addition to examining the logic, coverage, and clarity of the legislation itself, there is an attempt to use several nonlegal criteria--such as relative pollution levels--to critically evaluate the efficacy, or otherwise, of this legislative regime. Various nonlegal issues--like the after effects of various Vietnam wars--are cited as impediments to any potential efficacy of this regime. Despite the ambitious nature of these environmental controls, the authors are guarded in their prognosis of the likely future success of these controls due to factors such as a past culture of nepotism and excessive bureaucracy, plus a lack of adequate funding, expertise, training, and manpower.

### **World Trade Organization Caught in the Middle: Are TEDs the Only Way Out?**

*Corinne Sam*

The United States implementation of section 609 of the Endangered Species Act created much controversy between the rules of international trade and the need for global environmental conservation. Pursuant to section 609, the United States prohibited several nations from importing into the United States shrimp that were caught in a manner affecting endangered sea turtles. These nations filed a dispute with the World Trade Organization (WTO). In order to be consistent with its preamble, which expresses the commitment to protect and preserve the environment, the WTO must begin to reconcile the dual goals of environmental conservation and free trade. In addition, the WTO should recognize that although environmental conservation measures may inhibit trade to some extent, conservation of the environment may be the best way to ensure the continued existence of the resources upon which trade depends.

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## COMMENTS

### **The National Grasslands and Disappearing Biodiversity: Can the Prairie Dog Save Us From an Ecological Desert?**

*Coby C. Dolan*

Prairie dogs once populated over 100 million acres of uninterrupted grasslands across the Great Plains of the United States. However, they, and other species of the plains, have been pushed to the brink of extinction by human encroachment. This Comment examines the historical decline of the prairie dog and other grassland species, which has resulted in a near ecological desert on once biologically diverse national grasslands. Despite this trend, mass extinction of grassland species is not inevitable. The Forest Service manages large sections of open grasslands under the National Forest Management Act, supplemented by requirements under the National Environmental Policy Act and the Endangered Species Act. However, while the Forest Service has promulgated planning criteria regulations to ensure diversity and viability of species, it frequently circumvents true ecosystem planning by ignoring species like the prairie dog, which is often considered a pest to be exterminated by powerful ranching interests. This Comment argues that the scientific evidence supports the elevation of the prairie dog to the role of keystone species because of its role in providing habitat for dozens of other grassland species. The tools are in place for the Forest Service to take an active role in restoring the grasslands ecosystem, but it will require political will, not judicial enforcement. A recent Supreme Court case makes legal challenges to inadequate forest plans difficult or impossible to bring.

### **Growing a Greener Future? USDA and Natural Resource Conservation**

*Jason Waanders*

From fairly modest beginnings, the United States Department of Agriculture (USDA) has grown into a giant cluster of federal agencies with a large amount of control over some of the nation's key natural resources. Due to flawed legal mandates and organizational problems, USDA has all too often paid insufficient attention to protecting and conserving the natural resources within its power. This Comment examines the USDA farm support programs, which have had serious impacts upon soil and water resources, and the United States Forest Service's management of the nation's forests, which often has paid insufficient attention to resources other than timber. Despite the serious impacts that these programs have had in the past, this Comment concludes that there is

a reason to believe that USDA may be ready to take on a more positive role in natural resource conservation. It discusses both the recent reorganization of USDA and the phase-out of the major farm support programs, viewing these as events that could fundamentally change the agency. This Comment concludes that USDA can and should retain its relevance by striving to become a natural resource agency with the mission of conserving the soil and water resources of the nation's rural areas.