

ENVIRONMENTAL LAW

Northwestern School of Law
of Lewis & Clark College

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ARTICLES

- “One Man’s Ceilin’ is Another Man’s Floor”: Property Rights as the
Double-Edged Sword..... 819
Robert H. Cutting

Professor Cutting addresses the question of how to reconcile the Transformative Economy with the Economy of Nature, a problem Professor Sax has called, “one of the most important problems of our day.” In his Article, Professor Cutting applies a “Cubism” (surface rights, subsurface rights, and airspace) property rights analysis to transboundary pollution. The author argues that this analysis utilizes property lines to impose responsibility on generator properties for all effects on receptor properties, thereby protecting the legitimate and historic property rights of both receptors and generators and reconciling property lines with the Economy of Nature.

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- Conflict Comes to Roost! The Bureau of Reclamation and the Federal
Indian Trust Responsibility 901
Harold Shepherd

Mr. Shepherd discusses the effect on tribal communities of the Bureau of Reclamation’s mismanagement of its trust responsibility regarding tribal water rights. The Article examines the ways in which federal agencies have implemented, and may potentially implement, the federal trust obligation in a way that avoids environmental and human crises before they develop. The author concludes by examining the future of the Bureau’s trust management and calls for reform in the agency that takes a proactive approach towards recognition and protection of tribal water interests.

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COMMENTS

Know When to Hold ‘Em: Minimizing Disclosure of Corporate Environmental Information	951
<i>Rebecca Fiechtl</i>	

In her Comment, Ms. Fiechtl examines the reasons for creating corporate environmental information, the available means for keeping information confidential, and the measures a corporation may utilize to avoid unnecessary disclosure of sensitive environmental reports. She concludes that although a confidentiality guarantee is impossible, the best method to guard against unintentional and unnecessary disclosure of sensitive environmental reports is the careful forethought and planning of a knowledgeable attorney.

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<i>Pronsolino v. Marcus</i> , the New TMDL Regulation, and Nonpoint Source Pollution: Will the Clean Water Act’s Murky TMDL Provision Ever Clear the Waters?	981
<i>Mandi M. Hale</i>	

Ms. Hale examines the problems associated with nonpoint source pollution and the EPA’s new total maximum daily load (TMDL) regulations under the Clean Water Act, which are designed to address those problems. The author concludes that, although EPA’s regulations are valid, because the provision lacks an enforcement mechanism for nonpoint source pollution, the TMDL, absent state action or congressional intervention, will not likely bring nonpoint source pollution under control.

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Playing by the Rules: The World Bank’s Failure to Adhere to Policy in the Funding of Large-Scale Hydropower Projects.....	1011
<i>Erin K. MacDonald</i>	

Ms. MacDonald examines the World Bank’s environmental and social policies and how these policies affect hydropower project development. The author notes that, although the Bank has demonstrated growing environmental awareness by incorporating considerations of environmental impacts, public health and safety, and resettlement of local populations into current Bank policy, actual projects fail to demonstrate change in World Bank practices. The author concludes that while improvements in Bank policy need to be made—including required public participation and accurately appraised alternatives—real improvements in the quality of hydropower projects require that the Bank more diligently implement their operational policies and procedures.

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The Commerce Clause Pendulum: Will Federal Environmental Law Survive in the Post-SWANCC Epoch of "New Federalism"?	1051
<i>Jamie Y. Tanabe</i>	

In her Comment, Ms. Tanabe examines the Supreme Court's decision in *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, and discusses the implications the case has for federal environmental law. Ms. Tanabe concludes that the Supreme Court's inclination toward reviving principles of federalism and President Bush's policy of increasing state jurisdiction over environmental affairs are swinging the pendulum of federalism back toward states' rights and away from federal environmental command and control regulation, making it likely that the states will play an increasing role in environmental law in the coming decade.

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BOOK REVIEW

Wealth Beyond Measure: A Review of <i>Precious Heritage: The Status of Biodiversity in the United States</i>	1089
<i>Richard J. Blaustein</i>	

In his Essay, Professor Blaustein reviews the book *Precious Heritage: The Status of Biodiversity in the United States*, which is a compilation edited by The Nature Conservancy and the Association for Biodiversity Information. The twenty-six contributors to *Precious Heritage* survey and describe America's biodiversity and discuss the serious stresses this rich heritage is experiencing. *Precious Heritage* concludes by offering a vision and concrete suggestions for safeguarding this natural heritage.

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CLEAR THE AIR

A Federal Appellate Court Update	1097
<i>Carl Tobias</i>	

As an update to his previous *Clear the Air* piece, Professor Tobias surveys the relevant developments in the potential split of the Ninth Circuit into two appellate courts. He advises that individuals and groups concerned about natural resources, the environment, and public lands, as well as the federal courts, should closely monitor these developments.

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