

ENVIRONMENTAL LAW

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ESSAY

Celebrating <i>Tahoe-Sierra</i>	1
<i>Richard J. Lazarus</i>	

The Supreme Court=s ruling in *Tahoe-Sierra* is a realization of the current Court=s potential to reach a sensible result in a regulatory takings case. A major victory for government regulators and environmentalists, *Tahoe-Sierra* finds its significance in its restoration of balance to the Court=s takings jurisprudence.

SYMPOSIUM

THE CLEAN WATER ACT TURNS 30: CELEBRATING ITS PAST, PREDICTING ITS FUTURE

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<i>Robert W. Adler</i>	

The overarching objective articulated in the opening sentence of the Clean Water Act is Ato restore and maintain the chemical, physical, and biological integrity of the Nation=s waters.@ In this Article Professor Adler argues that the physical and biological integrity components of this Awater quality trilogy@ have been largely ignored relative to the goal of chemical integrity. He then posits several possible explanations for this failure, and suggests a series of potential regulatory and legislative solutions.

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<i>Michael C. Blumm & William Warnock</i>	

Thirty years after assuming its modern form, the Clean Water Act has largely failed to curb the nation=s greatest source of water pollution: polluted runoff from nonpoint sources. Examining three landmark cases, the authors claim that this ineffectiveness is at least partly due to the fact that the U.S. Environmental Protection Agency has chosen to interpret

narrowly its authority over nonpoint sources. Although the courts have sustained all of EPA's positions, the authors point out several opportunities for litigants to challenge EPA's "roads not taken."

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Robin Kundis Craig

In January 2001, the U.S. Supreme Court decided *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers* (*SWANCC*), reestablishing the relevance of navigability to the Clean Water Act's "waters of the United States" and simultaneously emphasizing federalism considerations in Clean Water Act jurisdiction determinations. To date, however, federal courts have focused far more on the "navigable waters" issues that the *SWANCC* Court created than on the federalism issues. Federalism concerns, however, may—and arguably should—become increasingly relevant in three areas of federal jurisdiction under the Clean Water Act: underground waters, dams, and ocean and coastal waters.

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Craig N. Johnston

EPA and the states have the discretion, and perhaps the legal responsibility, to take more aggressive steps under the Clean Water Act to protect distressed salmon populations in the Pacific Northwest. This Article examines the potential for more protective standards and argues that the Clean Water Act, rather than the Endangered Species Act, is the best mechanism for protecting the imperilled Pacific salmon.

Fault Lines in the Clean Water Act: Criminal Enforcement, Continuing Violations, and Mental State	173
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Susan F. Mandiberg

In this Article Professor Mandiberg discusses the conflicting canons of statutory construction that courts use in civil enforcement cases, on the one hand, and in criminal enforcement cases, on the other, and the tensions this conflict creates for issues such as substantive Clean Water Act provisions, statutes of limitations, civil and criminal penalties, and the mental state requirement in the Clean Water Act felony provision. The Article summarizes why the interpretive tension is problematic for the Clean Water Act and concludes by suggesting one route to resolving the problem.

NOTES & COMMENTS

- Bugenig v. Hoopa Valley Tribe: The Power Source of a Tribe Seeking to Achieve World Renewal and the Protection of Its Natural and Cultural Resources* 215
Jennifer Gingrich

This Note discusses the Ninth Circuit case involving a Hoopa Valley Tribe timber management plan that restricted the logging activities of a non-Indian landowner who owned land near a sacred site on the Tribe's reservation. Analyzing the Ninth Circuit three-judge panel decision and the Ninth Circuit reversal en banc, which found a congressional delegation to the Tribe, this Note discusses how Supreme Court precedent has chipped away at the notion of tribal inherent sovereignty, leaving tribes without recourse to protect the integrity of their lands or safeguard tribal cultural, historical, and natural resources.

- A Pacific Rim Approach to Salmon Management: Redefining the Role of Pacific Salmon International Consensus 247
Sean Phelan

This Comment analyzes the current course of international Pacific salmon management and the potential lessons of other international environmental agreements that could benefit Pacific salmon. The author concludes that a Pacific salmon conservation treaty, encompassing the entire anadromous life history, offers the best opportunity for long-term Pacific salmon protection and restoration.

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