

# ENVIRONMENTAL LAW

Lewis & Clark Law School

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VOLUME 33

SPRING 2003

NUMBER 2

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## ARTICLES

- CERCLA: Convey to a Pauper and Avoid Cost Recovery Under Section 107 (a)(1)? ..... 293

*Anthony R. Chase & John Mixon*

Unless a defendant qualifies as an “innocent owner,” the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) imposes liability on current owners of contaminated sites. This Article examines whether an almost-innocent owner of a negatively valued hazardous waste disposal site can shed unaccrued CERCLA cost recovery liability by conveying the property to a willing pauper, or whether the effort would be classed as a sham, fraudulent conveyance, or criminal act.

- Trust Principles as a Tool for Grazing Reform: Learning From Four State Cases ..... 341

*Sally K. Fairfax & Andrea Issod*

This Article examines the limits of trust principles in public resource management. The authors examine four state cases and argue that these decisions indicate public trust principles are useful guides in public resource administration, but they cannot be the silver bullet for reform—particularly in the “hard case” of grazing. The authors suggest that this may be equally true at the federal level. They conclude that, given the difficult current political climate, any grazing regulation reform will inevitably function better in theory than in practice.

- Laws Governing Recreational Access to Waters of the Columbia Basin: A Survey and Analysis ..... 399

*Stephen D. Osborne, Jennifer Randle, and Michael Gambrell*

This Article presents a systematic overview of state and federal laws governing recreational access and use rights to waters of the four-state Columbia River Basin. Each state has its own statutory scheme and common law tradition governing recreational access, including widely varying statutes limiting liability of landowners who open their lands for recreational use. The authors point out uncertainties and anomalies in these laws, and suggest ways in which they can be improved.

## COMMENT

- Job's Plight Revisited: The Necessity Defense and the Endangered Species Act ..... 449  
*Anne Lindquist*

This Comment explores the necessity defense and its utility in the face of alleged takings violations under the Endangered Species Act. The author analyzes the use of the defense in common law, environmental litigation, and federal courts, including the recent Supreme Court decision *United States v. Oakland Cannabis Buyers Cooperative*. She concludes that the Endangered Species Act should be construed to permit courts to consider a necessity defense where defendant is charged with unlawfully taking a protected species.

## BOOK REVIEW

- Of Crude Tools, Paddle Brooms, and Tempting Mules With Stones: Blumm's *Sacrificing the Salmon* ..... 483  
*Geoffrey Wandesforde-Smith*