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- Homesteading Rock: A Defense of Free Access Under the General Mining Law of 1872 745
Andrew P. Morriss, Roger E. Meiners, and Andrew Dorchak

Contrary to most contemporary accounts, the authors argue that the General Mining Law of 1872 represents an institution that effectively resolves incentive problems created by government ownership of mineral resources rather than a blatant giveaway of public resources. Instead of calling for radical change in U.S. mining laws, the authors hold up the free access principle of the General Mining Law of 1872 as a model for privatization of assets whose value is unknown.

CLEAR THE AIR

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<i>Amie Jamieson</i>	

In this Chapter, Ms. Jamieson analyzes the Ninth Circuit’s decision in *United States v. Antoine*, in which a defendant claimed that the Religious Freedom Restoration Act (RFRA) protected him from being prosecuted for violations of the Bald and Golden Eagle Protection Act (BGEPA). The court held that the conservation of bald eagles is a compelling government interest, even given that the United States Fish and Wildlife Service proposed delisting the bald eagle, and affirmed Antoine’s conviction. The court, however, implied that a final rule to delist could mean that the conservation interest in eagles is no longer compelling and could be a basis for stripping the species of BGEPA protection. The Chapter analyzes the Ninth Circuit’s and other courts’ approaches to the BGEPA in RFRA challenges and criticizes the Ninth Circuit’s exclusive reliance on the ESA to determine whether the government has a compelling interest in bald eagles. The Chapter concludes that the courts should not use the ESA listing status of bald eagles to determine whether the government has an interest in eagles compelling enough to survive a RFRA challenge.

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<i>Katharine G. Shirey</i>	

In this Chapter, Ms. Shirey examines the Ninth Circuit’s decision in *Public Citizen v. Department of Transportation*. That case lies at the intersection of the North American Free Trade Agreement (NAFTA) and the National Environmental Policy Act (NEPA). The parties and the Ninth Circuit nonetheless chose to couch the issues in purely domestic terms. As the globalization of trade and capital continues to increase the interdependence of the United States and other nations of the world, cases involving the clash between the United States’s international trade obligations and the protection of the domestic environment will become more common. After examining the international law, foreign relations, and separation of powers issues implicated in *Public Citizen*, this Chapter concludes that Congress should use its foreign commerce power to expressly address the domestic environmental consequences of international obligations taken on by the United States.

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