

# ENVIRONMENTAL LAW

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## ARTICLES

- Climate Change in the Supreme Court ..... 1

*Lisa Heinzerling*

This Article provides an insider's perspective on the lawyerly decisions that went into bringing and briefing the case of *Massachusetts v. Environmental Protection Agency*.

- Is Environmentalism Dead? ..... 19

*Christopher D. Stone*

Widely circulated allegations claim that the environmental movement has run out of steam and “must die, so that something else”—unspecified—“may live.” The charge, however hyperbolic, deserves attention. While there have been gains on some fronts, many aspects of the environment continue to degenerate. Looking back across three or four decades, how does the movement stack up, in terms of its own ambitions and priorities? How does it compare with, and what can it learn from, other social movements, from abolitionism to women's rights? This Article reviews the criteria according to which the success or failure of environmentalism might be evaluated, and concludes that, overall, reports of its death are “greatly exaggerated.”

- Imposing Judicial Restraints on the “Art of Deception”: The Courts Cast a Skeptical Eye on Columbia Basin Salmon Restoration Efforts ..... 47

*Michael C. Blumm & Hallison T. Putnam*

In a follow-up to an article on Columbia Basin salmon restoration efforts published in this journal two years ago, the authors analyze several federal court decisions of 2007, which they claim reflect a rise in judicial skepticism. They view this skepticism as a therapeutic antidote for the widespread federal agency deception that has long characterized salmon restoration measures in the Columbia Basin.

Waterbirds, the 2010 Biodiversity Target, and Beyond: AEWA's Contribution to Global Biodiversity Governance .....	87
<i>Rachelle Adam</i>	

Our planet's biodiversity is governed by a system of multilateral biodiversity agreements (MBDAs), created to stop the ongoing degradation of the biological infrastructure of our planet, upon which all life is dependent. However, despite their existence, biodiversity is still on the losing side. This Article addresses the contribution of a small, relatively unknown MBDA, the Agreement on the Conservation of African-Eurasian Migratory Waterbirds, or AEWA, to both the 2010 target of reducing biodiversity loss, and to a common strategy for the implementation of these international agreements.

On Thin Ice: The Failure of the United States and the World Heritage Committee to Take Climate Change Mitigation Pursuant to the World Heritage Convention Seriously .....	139
<i>Erica J. Thorson</i>	

Climate change is the fastest growing threat to natural areas, and it has already had devastating consequences for glaciers and coral reefs. Many of the most remarkable glaciated mountains and coral reefs are World Heritage sites, yet the World Heritage Committee has taken only nominal and perfunctory steps to address this global crisis. This Article explores the nature of the State Parties' obligations under the World Heritage Convention to mitigate climate change and posits that the World Heritage Committee should advance a meaningful climate agenda that calls on State Parties to undertake drastic greenhouse gas emission reductions.

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This Comment examines the status and effectiveness of the current carbon markets and their ability to create flexible and cost efficient tools to reduce greenhouse gas emissions. The Comment focuses on the European Emissions Tradition Scheme and the Chicago Climate Exchange.

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Measure 37 has changed the landscape of Oregon and its lauded planning system, literally and figuratively. Since passage of Measure 37 in 2004, thousands of property owners have filed Measure 37 claims.

Has the Federal Courts' Successive Undermining of the APA's Presumption of Reviewability Turned the Doctrine into Fool's Gold? .....	243
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Under the Mining Law of 1872, the Secretary of the Interior has the authority in certain circumstances to sell public lands to mining claimants. For obvious reasons, local residents may wish to challenge the agency's determination that the statutory requirements have been satisfied. Because the Mining Law does not provide third parties with an explicit cause of action, such a challenge must come under the Administrative Procedure Act's general provisions granting judicial review. However, the Supreme Court has continually weakened the APA's general grant of judicial review by expanding the subset of statutes which preclude review. Further, the Tenth Circuit's application of the statutory preclusion doctrine to the Mining Law of 1872, in *High Country Citizens Alliance v. Clarke*, has weakened the APA's presumption in favor of judicial review and has left plaintiffs without a door into the federal courts.

Is Scalian Standing the Latest Sighting of the <i>Lochner</i> -ess Monster?: Using Global Warming to Explore the Myth of the Corporate Person .....	273
<i>Jamie Gibbs Pleune</i>	

This Comment challenges the legal assumption that a corporation should be analogous to an individual in the standing analysis. The author suggests that fundamental differences between humans and corporations, particularly disparate political and economic power, should impact our approach to corporate personhood and standing. The author also suggests that ignoring these differences inadvertently favors corporations and weakens the environmental regulatory structure.

Postcard from the Reality-Based Universe: "Wish You Were All Here!" A Meditation on the Relationship between Science, Intellectual Property Law, and the Rights of Indigenous Populations in Plant Genetic Resources .....	315
<i>Dorothy E. Schmidt</i>	

Patents on plant-derived products have proven to be quite controversial, with critics employing terms such as "biopiracy" to describe the practice and supporters noting that revisions in patent law would be insufficient to address the root causes of the harm. This Comment explores the roles that science, technology, and expertise play in formulating the "biopiracy" debate. Specifically, this Comment argues that the critics of "biopiracy" should utilize the creative energies of science to serve their ends while supporters should consider altering patent law to support innovation more efficiently. In effect, a science-based vision of creativity may help protect intangible human resources and bring the two views into harmony.