

# ENVIRONMENTAL LAW

Lewis & Clark Law School

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## ARTICLES

- Bioregional Conservation May Mean Taking Habitat ..... 249

*Jamison Colburn*

Conservation's richest innovation in decades has been the conservation easement. But with the demand for homes and second homes in rural and "exurban" environments soaring, the price of landscape scale easements keeps rising, even as more of what is supposedly protected faces new risks. Professor Colburn argues that the necessity of condemning conservation easements from those who would subdivide and develop large ownerships must prevail over the political complications and costs of doing so, at least if local communities hope to preserve their own biodiversity.

- From the USA With Love: Sharing Home-Grown Hormones, GMOs,  
and Clones With a Reluctant Europe..... 301

*Cinnamon Carlarne*

This Article examines the impact of biotechnology on international trade relations between the United States and the European Union, focusing on existing and potential disputes over trade in meat treated with hormones, genetically modified organisms, and meat and dairy products from cloned animals. The Article reviews the ongoing United States-European disagreements over the social, ethical, and environmental implications of producing, using, and trading the products of modern science and considers whether the cloned foods debate is likely to shift the nature of the biotechnology-food debate and whether such a shift is necessary and desirable.

- Irrigation Return Flow or Discrete Discharge? Why Water Pollution  
From Cranberry Bogs Should Fall Within the Clean Water Act's  
NPDES Program..... 339

*Andrew C. Hanson & David C. Bender*

Though not historically subject to the Clean Water Act, cranberry farms are water-intensive and frequently have negative impacts on water quality due to excessive discharges of phosphorus and pesticide residue. The authors demonstrate why a recent public nuisance lawsuit in Wisconsin against a cranberry grower proved to be largely ineffective, and argue that the NPDES permit system would provide a

more efficient means to control pollution from cranberry farms, despite the “irrigation return flow” exemption in the CWA.

The Protection of Environmentally-Displaced Persons in International Law .....	365
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The issue of environmental degradation is broad and complex. This Article endeavors to better understand one particular aspect, namely the phenomenon of environmentally-induced migration. While the international definition of a refugee has divided scholars, it is now time to refocus the discussion to set forth constructive solutions.

## AMICUS BRIEF

Brief for Natural Resources Defense Council as Amici Curiae Supporting Respondent, United States v. Atlantic Research Corp., No. 06-562 (U.S. Apr. 5, 2007) .....	411
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For more than 25 years, private parties cleaning up contaminated sites have used CERCLA to spread costs to others who played a role in causing the contamination. In *Atlantic Research*, the Government has argued in favor of limiting the ability of private parties to seek reimbursement. This Amici Brief, filed with the Court April 5, 2007, supports the ability of potentially liable parties to seek recovery of a portion of the clean up costs.

## COMMENTS

Repudiation and Regret: Is the United States Sitting Out the Kyoto Protocol to Its Economic Detriment?.....	441
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The moral and scientific reasoning behind the U.S. refusal to become a Party to the Kyoto Protocol has been debated, and the potential environmental consequences of that decision cannot be ignored. But what about the effect on the American economy? This Comment discusses the likely impact of the Bush Administration's opposition to the anti-global warming treaty in light of the government's claim to be acting in the best interests of the American economy.

Common Law on Ice: Using Federal Judge-Made Nuisance Law to Address the Interstate Effects of Greenhouse Gas Emissions .....	463
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Common law, particularly federal common law, remedies to environmental harms are often passed over for complex statutory provisions. Yet, as new environmental threats appear and Congress has neglected to address particular issues, the common law can provide an important avenue to protect environmental values and spur political action. This Comment examines how and when common law can work to redress harms that go beyond explicit statutory remedies.

The Power of the Sea: Using Ocean Energy to Meet Florida’s Need  
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*Lisa A. Kelley*

Harvesting renewable energy from our oceans can be done through the development of wave farms. By promoting these developments, coastal states such as Florida may be able to meet increasing energy demands while simultaneously protecting our environment.