ENVIRONMENTAL LAW
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ARTICLES

Standing and Global Warming: Is Injury to All Injury to None? 1
Bradford C. Mank

Professor Mank addresses the question of when a plaintiff may have standing to sue the United States Environmental Protection Agency (EPA) or another federal agency for injuries resulting from the agency's failure to consider climate change when formulating new rules and regulations. First providing a brief overview of the scientific evidence of global warming and international efforts to curb the phenomenon, Professor Mank then provides a comprehensive analysis of standing issues that arise in environmental litigation. He examines standing tests in National Environmental Policy Act (NEPA) litigation in light of Justice Scalia's dictum regarding standing and procedural rights in footnote seven of *Lujan v. Defenders of Wildlife* and concludes that the liberal standing tests of the Ninth and Tenth Circuits are the most consistent with footnote seven and congressional intent underlying NEPA. Professor Mank also addresses whether plaintiffs may have standing to sue EPA under either the Clean Air Act (CAA) or the Administrative Procedure Act (APA) for the agency's failure to consider the climate change effects of greenhouse gas emissions when issuing permits under the CAA's New Source Review (NSR) program. He concludes that although a plaintiff likely cannot sue under the CAA directly, some plaintiffs would be able to sue EPA under either NEPA or the APA to force the agency to consider climate change when promulgating a new rule or issuing an NSR permit.

"The Supreme Court of Science" Speaks on Water Rights:
The National Academy of Sciences Columbia River Report
and Its Water Policy Implications..... 85
Reed D. Benson

Professor Benson reviews the Report on Columbia River water withdrawals and their effects on salmon recently issued by the National Academy of Sciences to the Washington State Department of Ecology, the agency responsible for managing Washington's water withdrawals from the Columbia and its tributaries. After reviewing the Report, Professor Benson

compares its recommendations with western water law's doctrine of prior appropriation and finds that many of the Report's recommendations are in direct conflict with prior appropriation principles. Finally, Professor Benson discusses the potential impact of the Report on water law in Washington and throughout the West. He concludes that, because the National Academy of Sciences is a highly respected research organization, despite the conflict between the Report's recommendations and traditional western water law, the Report appears to be guiding Washington in its formulation of new water withdrawal policies and may guide other states' policies in the future.

BOOK REVIEW

On the Role of Cost-Benefit Analysis in Environmental Law: A Book Review of Frank Ackerman and Lisa Heinzerling's *Priceless: On Knowing the Price of Everything and the Value of Nothing* 135
Shi-Ling Hsu

Professor Hsu reviews Frank Ackerman and Lisa Heinzerling's recent contribution to cost-benefit scholarship, *Priceless: On Knowing the Price of Everything and the Value of Nothing*. Professor Hsu first notes that the authors have powerfully captured the best arguments of the detractors of cost-benefit analysis; but he quickly criticizes the authors for perpetuating the stalemate between advocates and detractors of cost-benefit analysis by presenting their arguments in absolute terms. Recognizing that not all environmental problems can or should be informed by cost-benefit analysis, Professor Hsu attempts to spark the debate to define boundaries for when cost-benefit analysis may be used; he proposes that cost-benefit analysis is inappropriate when risk of harm is too great and when environmental justice concerns are implicated.

COMMENTS

From a Nonpollutant into a Pollutant: Revising EPA's Interpretation of the Phrase "Discharge of any Pollutant" in the Context of NPDES Permits 175
Alison M. Dornsife

Ms. Dornsife reviews the inconsistent interpretations of the term "discharge" in the National Pollutant Discharge Elimination System and dredge and fill permit provisions of the Clean Water Act, reviews EPA's potential courses of action, and suggests that EPA formally promulgate a rule that increases consistency between the two permit provisions by broadening the definition of the term "discharge." While the Act currently only requires NPDES permits for those activities that add a pollutant "from the outside world," Ms. Dornsife suggests that EPA interpret the term "discharge" for purposes of NPDES permitting

requirements to include those circumstances in which a material is transformed from a nonpollutant into a pollutant.

Substantive Due Process Claims in the Land-Use Context: The Need for a Simple and Intelligent Standard of Review..... 209
Parna A. Mehrbani

In this Comment, Ms. Mehrbani examines the standard of review for cases in which a landowner claims that a municipal government body has violated her substantive due process rights under section 1983 of the Civil Rights Act. After providing an overview of the basic scope and usage of section 1983 in this context, the Comment discusses the Third Circuit's recent decision to impose a strict "shocks the conscience" standard in *United Artists Theatre Circuit Inc. v. Township of Warrington*. The Comment then provides a survey of the myriad standards of review used in the federal circuit courts and analyzes the inconsistencies and disagreements among the circuits. The Comment advocates that the proper standard of review in these cases cannot be an adoption of a generic standard used in all substantive due process cases. Rather, the standard of review must be tailored to the unique land-use context by recognizing the importance of property rights to both the individual landowner and the community.

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