

Volume 27, Issue 3
Fall 1997

SYMPOSIUM ON HABITAT CONSERVATION PLANS

Reshaping Habitat Conservation Plans for Species Recovery: An Introduction to a Series of Articles on Habitat Conservation Plans

John Kostyack

Mr. Kostyack introduces a series of articles on habitat conservation planning and proposes ways to improve the habitat conservation planning process.

The No Surprises Policy: Contracts 101 Meets the Endangered Species Act

Donald C. Baur & Karen L. Donovan

Mr. Baur and Ms. Donovan discuss the No Surprises Policy. They argue that the Policy and habitat conservation planning are essential to promoting the goals of the Endangered Species Act.

Can We Conserve California's Threatened Fisheries Through Natural Community Conservation Planning

John M. Gaffin

Mr. Gaffin evaluates past implementation of California's Natural Community Conservation Planning Act. Mr. Gaffin concludes that the current NCCP process is not likely to provide adequate protection for endangered species.

Using Habitat Conservation Plans to Implement the Endangered Species Act in Pacific Coast Forests: Common Problems and Promising Precedents

Daniel A. Hall

Mr. Hall discusses the problems and promises of habitat conservation planning and gives a broad review and critique of the plans covering forestland in the Pacific Northwest.

The Embattled Social Utilities of the Endangered Species Act-A Noah Presumption and a Caution Against Putting Gasmasks on the Canaries in the Coalmine

Zygmunt J.B. Plater

Professor Plater discusses the often overlooked, yet vitally important, role of endangered species as social indicators.

COMMENT

FERC's Abdication of Jurisdiction Over Hydroelectric Dams on Nonnavigable Rivers: A Potential Setback for Comprehensive Stream Management

Max J. Mizejewski

Mr. Mizejewski examines the recent abdication of jurisdiction by the Federal Energy Regulatory Commission over two hydroelectric projects. Mr. Mizejewski concludes that the Commission's recent reversal on the extent of its own jurisdiction is both a violation of the Commission's directive and a threat to the protection of our nation's waters.

ESSAY

Fairness in Environmental Law

Richard J. Lazarus

Professor Lazarus's essay is based on his speech presented at the Natural Resources Law Institute's 1996 Distinguished Visitor Lecture on October 3, 1996. Professor Lazarus discusses fairness in environmental law in the context of environmental justice, private property rights, and environmental crime.

1996 NINTH CIRCUIT ENVIRONMENTAL REVIEW

An Inapt Fiction: The Use of the *Ex Parte Young* Doctrine for Environmental Citizen Suits Against States After *Seminole Tribe*

Courtney E. Flora

Ms. Flora analyzes the current use in the Ninth Circuit of the *Ex Parte Young* doctrine in the wake of the Supreme Court's *Seminole Tribe* and *Couere d'Alene* decisions. Ms. Flora argues that the use and extent of the *Ex Parte Young* doctrine needs clarification because it is an important tool for environmental citizen suits.

How Far Should the Bar on Citizen Suits Extend Under § 309 of the Clean Water Act?

Heather L. Clauson

Ms. Clauson examines section 309 of the Clean Water Act which allows certain administrative enforcement actions to preclude citizen suits. Ms. Clauson urges Congress to address a split in the circuits by clarifying the statute's language to allow a more uniform application of the section's bar on citizen suits.

Are Insignificant Emissions Significant? *Western States Petroleum Ass'n v. EPA*: The Air Operating Permit Program of the Clean Air Act

Todd B. Westersund

Mr. Westersund reviews the recent Ninth Circuit decision in *Western States* which held the EPA abused its discretion in failing to approve the State of Washington's Title V program. Mr. Westersund argues that Washington's program meets the goals of Title V and is a model for other such programs.