

# ENVIRONMENTAL LAW

Lewis & Clark Law School

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## ESSAYS

- Scientific Innovation and Environmental Protection: Some Ethical Considerations ..... 755  
*Carol M. Rose*

In this essay, Professor Rose examines an important ethical dilemma that scientific research poses for the environment. She argues that the economics of scientific research push this research in the direction of “propertizable” economic gains, and thus scientific research tends to turn only later to environmental subjects. The author concludes that some regulatory programs, including those that enlist economic incentives, can help to reduce the resulting research gap.

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- Reconceiving the Bundle of Sticks: Land as a Community-Based Resource ..... 773  
*Myrl L. Duncan*

Emphasizing that land ownership exists within complex and interconnected social and ecological communities, Professor Duncan calls for a reorientation of the bundle of sticks metaphor to explicitly encompass the public interest.

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## ARTICLE

- “Greening” the Constitution—Harmonizing Environmental and Constitutional Values ..... 809  
*Robert V. Percival*

As an activist Supreme Court reshapes constitutional law to limit federal power, bolster state sovereignty, and increase protection for property rights, efforts to protect the environment frequently confront constitutional challenges. After reviewing the history of constitutional challenges to environmental regulation, Professor Percival argues that there is no fundamental conflict between environmental and constitutional values in light of the legal system’s shift from reliance on common law to contemporary federal regulatory

programs to protect the environment. Professor Percival highlights tensions generated by the Court's new federalism, such as its expansion of state sovereign immunity despite its revival of regulatory takings liability, and he suggests ways of defusing such tensions.

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## NOTES & COMMENTS

Environment, Equality, and Indigenous Peoples' Land Rights in the Inter-American Human Rights System: <i>Mayagna (Sumo) Indigenous Community of Awas Tingni v. Nicaragua</i> .....	873
<i>Jennifer A. Amcott</i>	

This Note examines the recent decision by the Inter-American Court of Human Rights to recognize the traditional territory of the Awas Tingni Community. The author explores the case and its far-reaching implications for indigenous peoples throughout the Americas.

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Like Wilderness, but <i>Need</i> Oil? Securing America's Future Energy Act Puts Little Between Accident-Prone Oil Companies and the Arctic National Wildlife Refuge .....	905
<i>Samuel Stanke</i>	

This Comment explores the circumstances underlying the fierce controversy over lifting the ban on oil drilling in a small but vital part of the Arctic National Wildlife Refuge (ANWR). The author analyzes environmental provisions of the ban-lifting bill rejected by the Senate in May 2002 and compares a major Alaska oil developer's public relations "talk" with its environmental track record "walk." The author concludes that the developer's sincere environmental benevolence, unaccompanied by specific development restrictions in the ban-lifting legislation, would do little to protect ANWR against the significant environmental damage and ecological disruption inherent in oil recovery.

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