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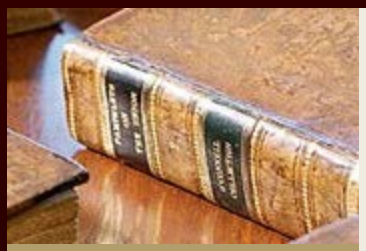

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2016 NEWS ARCHIVE

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The Volume 43, Issue 1 of the *Boston College Environmental Affairs Law Review* is now available. The issue contains two articles, four notes written by staff members from the Class of 2016, and three case comments written by staff members from the Class of 2017. The issue is available at http://lawdigitalcommons.bc.edu/ealr/. Summaries of these works appear below.

DON'T BE CRUEL (ANYMORE): A LOOK AT THE ANIMAL CRUELTY REGIMES OF THE UNITED STATES AND BRAZIL WITH A CALL FOR A NEW ANIMAL WELFARE AGENCY

David N. Cassuto & Cayleigh Eckhardt, Article

Cassuto and Eckhardt offer a comparative analysis of the agricultural animal welfare regimes of the United States and Brazil, which illustrates the institutionalized indifference to animal suffering in both countries. To remedy the current regulatory structure, this Article proposes the creation of an independent federal agency—The Animal Welfare Agency ("AWA")—to regulate the safety and welfare of all animals, to significantly reduce systemic animal cruelty.

THE BUSINESS AND ETHICS OF LAYING HENS: CALIFORNIA'S GROUNDBREAKING LAW GOES INTO EFFECT ON ANIMAL CONFINEMENT

Valerie J. Watnick, Article

In the United States, most laying hens are routinely subjected to cruel treatment and forced to live in such extreme confinement that they are unable to fully extend their limbs or turn around. Watnick argues that there is an ethical obligation—and there should be a legal obligation—to ensure the humane treatment of farm animals. This Article goes on to suggest a framework for new federal legislation, mirroring California's Proposition 2 and subsequent amendments, to govern the confinement and humane treatment of farm animals.

The Smart Grid in Massachusetts: A Proposal for a Consumer Data Privacy Policy

Andrew Bartholomew, Note

To ensure that Massachusetts is prepared for widespread implementation of smart grid technology, the Commonwealth should adopt new regulations building off its existing data privacy law and considering other states' attempts at smart grid privacy policies, as well as the federal government's recommendations.

The Foreign Corrupt Practices Act: Prosecute Corruption and End Transnational Illegal Logging

Sarah M. Gordon, Note

The United States is one of the world's largest consumers of wood products and thus drives the

illegal logging industry far beyond our borders. Illegal logging is facilitated by corruption and bribery within many contexts, including bribes from those engaged in illegal logging to police, officials, regulators, and customs and export officials who are entrusted with the task of preventing illegal logging. This Note argues that the Department of Justice should begin using the Foreign Corrupt Practices Act's anti-bribery provisions as an alternative method to prosecute those engaged in illegal logging. The expansively drafted FCPA is the perfect tool, as it can be applied to a wide range of actors and conduct that facilitates illegal logging.

Nuclear Power as an Alternative Green Fuel: Why Uprates to Commercial Nuclear Reactors Deserve to Be Eligible for Federal Loan Guarantees, and Why the DOE's Decision to Make Them So Warrants *Chevron* **Deference**

Marisa P. Kaley, Note

Title XVII of the Energy Policy Act of 2005 authorizes the Department of Energy to provide loan guarantees to nuclear energy projects that avoid, reduce, or sequester greenhouse gas emissions while employing new or significantly improved technology. The agency's decision to include uprates —projects that increase the amount of power an existing reactor produces—among those nuclear projects that may apply for a loan guarantee should survive a legal challenge under the deferential standard laid out in *Chevron*. Consistent with Congress's goal of combating global warming and climate change, the DOE's interpretation of Title XVII encourages the growth of America's commercial nuclear capacity in an effort to reduce reliance on fossil fuels to generate electricity.

Advocating for the Adoption of West Virginia's Substantial Burden Standard Across the Mining States

Kathryn Scherpf, Note

Across the mining states, property is often severed horizontally with rights above granted to farmers and rights below granted to mining companies. The various states, over the years, have each incorporated a version of the *reasonable necessity* doctrine to determine the degree of harm mineral estate owners would implicitly be permitted to cause to the surface in accessing their mineral rights below. Notably, in many of these states, the *reasonable necessity* doctrine is rather lenient on mineral owners permitting as much surface harm as necessary. West Virginia, however, has incorporated a heightened version of the doctrine that forbids mineral owners from causing substantial surface harm offering greater protection for surface owners.

A Texas Takings Trap: How the Court in *Edwards Aquifer Authority v. Bragg* **Fell into a Dangerous Pitfall of Takings Jurisprudence**

Joseph Belza, Comment

After the Texas state government began capping groundwater consumption, a pecan farmer filed a regulatory takings suit, alleging that the pumping permitting scheme was so onerous that it amounted to the physical seizure of his property by eminent domain. The court found for the farmer, and ordered the state water conservation agency to compensate him for the economic impact to his orchard. The court, however, fatally misapplied the *Penn Central* test, setting a dangerous example for other jurisdictions.

The Procedural Impact of an Environmental Impact Statement on Judicial Review

Ashley Poon, Comment

Drakes Bay Oyster Company located in the Point Reyes National Seashore operated under a forty-year permit that the Secretary of the Department of the Interior declined to extend, resulting in the oyster farm's closure. The Secretary of the Interior believed that the region's designation as "potential wilderness" under the Point Reyes Wilderness Act, along with public policy considerations, obligated him to decline renewal of the permit. In producing an Environmental Impact Statement regarding the impact of closing the oyster farm, the Secretary procedurally insulated his agency decision from later judicial review in *Drakes Bay Oyster Company v. Jewel*l.

Buried Beneath the Legislation It Gave Rise to: The Significance of *Woodruff v. North*

Bloomfield Gravel Mining Co.

Kaitlin N. Vigars, Comment

In the mid 1800's the California gold rush ushered in a new era of industry to the farming communities of the Sacramento Valley. This influx of people, capital, and technological innovation also brought with it significant pollution that nearly destroyed the agricultural value of the region. In 1884, Edward Woodruff brought suit against the gold mining companies alleging that the companies' practices of discarding their debris into the area's waterways constituted a public nuisance. Although, the decision has been largely ignored by practitioners and scholars, it marks a significant step toward the regime of environmental regulation that we know today.

More: http://lawdigitalcommons.bc.edu/ealr/