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## New Issue of Boston College Environmental Affairs Law Review Now Available

Boston College Law School

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## New Issue of Boston College Environmental Affairs Law Review Now Available

2016 NEWS ARCHIVE

06/01/16

Volume 43, Issue 2 of the Boston College Environmental Affairs Law Review is now available. The issue contains nine Articles written in connection with the symposium *Who Will Pay: The Public & Private Insurance Implications of Climate Change's Drastic Challenges*, as well as four Notes written by staff members from the Class of 2016, and two Case Comments written by staff members from the Class of 2017. Summaries of these works can be found below. The full versions of these works can be found at <http://ealr.bclawreview.org/current-issue/>

### [HOW CAPITAL MARKETS CAN HELP DEVELOPING COUNTRIES MANAGE CLIMATE RISK](#)

*Michael Bennett & Sophie Smyth, Article*

Bennett and Smyth suggest that the World Bank's Caribbean Catastrophe Risk Insurance Facility and related catastrophe bond issue could serve as a model for providing assistance to developing countries in their efforts to mitigate the risks associated with climate change. Further, to maximize the success of such assistance, beneficiary countries should be encouraged to invest in *ex ante* climate risk preparedness and resilience by requiring such action as a condition of receiving such development assistance.

### [INCENTIVIZING MUNICIPALITIES TO ADAPT TO CLIMATE CHANGE: TAKINGS LIABILITY AND FEMA REFORM AS POSSIBLE SOLUTIONS](#)

*David Dana, Article*

Dana addresses a central question of climate adaptation in the United States: how can municipalities, which are best positioned to take a lead in climate change adaptation efforts, be incentivized to do so? This Article argues that municipalities should be given an incentive to adapt by means of modifications in federal aid programs that in effect would require the municipalities to obtain private insurance against climate-change-related damage to public property and infrastructure.

### [MITIGATION OF CLIMATE CHANGE RISKS AND REGULATION BY INSURANCE: A FEASIBLE PROPOSAL FOR CHINA](#)

*Qihao He, Article*

He's Article examines the ability of two types of insurance—liability insurance and catastrophe insurance—to regulate and thus help mitigate climate change risks, and considers the potential lessons for China.

### [LESSONS FROM U.S. COASTAL WIND POOLS ABOUT CLIMATE FINANCE AND POLITICS](#)

*Donald T. Hornstein, Article*

Hornstein focuses on the role that private and public insurance can play, both positively and negatively, on the effects of climate change. It provides one of the most detailed analyses in the legal literature to date on the finances of three state residual-risk wind pools in the Gulf and Southeastern United States that have been created specifically with hurricane risks in mind.

### **CLIMATE CHANGE AND FEDERAL CROP INSURANCE**

*Chad G. Marzen & J. Grant Ballard, Article*

Marzen and Ballard suggest that an amendment to the “good farming practices” standard of the federal crop insurance act may have a significant effect in promoting climate change mitigation. The Article’s proposed amended standard would dictate that if a farmer utilizes “sustainable, resilient and soil-building agricultural practices,” then such utilization must be weighed as a substantial factor in support of a “good farming practices” determination by the Risk Management Agency.

### **THE GOVERNMENT’S ROLE IN CLIMATE CHANGE INSURANCE**

*Peter Molk, Article*

Molk examines the government’s role in providing unified markets for insuring climate change risk. Although innovations in reinsurance markets suggest that private insurers could cover discrete risks associated with climate change, such as flood or wind loss, climate change’s broader systemic risks present problems of scale and scope that public insurance is better positioned to handle.

### **APPLYING LIFE INSURANCE PRINCIPLES TO COASTAL PROPERTY INSURANCE TO INCENTIVIZE ADAPTATION TO CLIMATE CHANGE**

*Edward P. Richards, Article*

Richards’ Article suggests that the best way to represent the risk of climate change and sea level rise through insurance is to apply the human-life insurance model to coastal property insurance. As with human-life insurance, premiums of coastal property insurance policies would increase on a regular schedule through time, thus creating a powerful risk signal to incentivize adaptation.

### **STRATEGIC LAND USE LITIGATION: PLEADING AROUND MUNICIPAL INSURANCE**

*Christopher Serkin, Article*

Serkin argues that states should find ways to extend municipal insurance to cover Fifth Amendment regulatory takings claims. This could prevent plaintiffs from pleading around municipal insurance policy exclusions.

### **CLIMATE CHANGE INSURANCE AND DISASTERS: IS THE SHENZHEN SOCIAL INSURANCE PROGRAM A MODEL FOR ADAPTATION?**

*Anastasia Telesetsky & Qihao He, Article*

This Article describes one pilot product introduced in the City of Shenzhen, a global mega-city with a population of approximately fifteen million, and explores its strengths and weaknesses as a model for adaptation to climate change. This Article concludes with proposals for reducing risk within mega-cities and pooling risk among them.

**THE INTERSECTION OF THE TAKINGS CLAUSE AND RISING SEA LEVELS: JUSTICE O'CONNOR'S CONCURRENCE IN PALAZZOLO COULD PREVENT CLIMATE CHANGE CHAOS**

Devon Applegate, Note

By embracing the approach to the *Penn Central* test illustrated by Sandra Day O'Connor's concurring opinion in *Palazzolo v. Rhode Island*, the Supreme Court could reduce the confusion surrounding takings jurisprudence, provide uniformity at a critical time, swiftly handle the excess of takings claims that will inevitably materialize, and give deferential treatment to important regulations that possess strong public purposes.

**CHALLENGING THE 2013 RULE IMPLEMENTING REGULATIONS ON OVERSNOW VEHICLE USE IN YELLOWSTONE NATIONAL PARK**

Brian Bieschke, Note

In 2013, the National Park Service ("NPS") promulgated a new rule to regulate the use of snowmobiles and snowcoaches in Yellowstone National Park during the winter months. This Note engages in an analysis of the novel framework employed by this Rule and argues that utilization of a transportation event scheme strikes the appropriate balance between conservation interests and allowing access to the park's resources.

**RESURRECTING THE PUBLIC TRUST DOCTRINE: HOW ROLLING EASEMENTS CAN ADAPT TO SEA LEVEL RISE AND PRESERVE THE UNITED STATES COASTLINE**

Erica Novack, Note

Rolling easements—prohibiting hard shoreline armoring and requiring the movement or abandonment of property once it becomes inundated by the sea—would allow for the natural inland migration of invaluable coastal resources such as beaches and wetlands. Further, enacting rolling easement polices would be a proactive step towards providing ocean-front property owners with notice of the necessarily finite nature of their property rights, while protecting the future interests of the public in public trust lands.

**WATER, WATER, EVERYWHERE, AND PLENTY OF DROPS TO REGULATE: WHY THE NEWLY PUBLISHED WOTUS RULE DOES NOT VIOLATE THE COMMERCE CLAUSE**

Samuel Worth, Note

Worth's Note argues that, as a matter of Commerce Clause jurisprudence, the new 2015 EPA WOTUS Rule is a valid legal tool to aid the federal government in its fight against the degradation and pollution of our nation's waters.

**A WIDE BERTH FOR FRCP 52: APPLICATION OF THE CLEARLY ERRONEOUS STANDARD OF REVIEW IN THE ADMIRALTY LAW CONTEXT**

Emma Nitzberg, Comment

Nitzberg's Comment focuses on the Admiralty proceeding *Frescati Shipping Co. v. Citgo Asphalt Refining Co.*, and its use of the standard set forth in FRCP 52. Nitzberg concludes that, in the highly specialized context of Admiralty law, uniformity and consistency are especially necessary, and by employing the clearly erroneous standard of review in the Admiralty context, the Third Circuit adequately served the aim of maintaining uniformity of results within a niche area of law.

**A FRACTURED STANDARD: HOW THE FOURTH CIRCUIT GRANTED EXPANSIVE IMPLIED PROPERTY RIGHTS TO MINERAL OWNERS**

*Davis Truslow, Comment*

Truslow's Comment analyzes the Fourth Circuit decision *Whiteman v. Chesapeake, L.L.C.* This Comment argues that the court's decision misapplied a common law standard to a unique set of facts and, as a result, significantly diluted prior protections afforded to individual landowners.

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