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COLLEGE OF LAW

SAN JOAQUIN AGRICULTURAL LAW REVIEW



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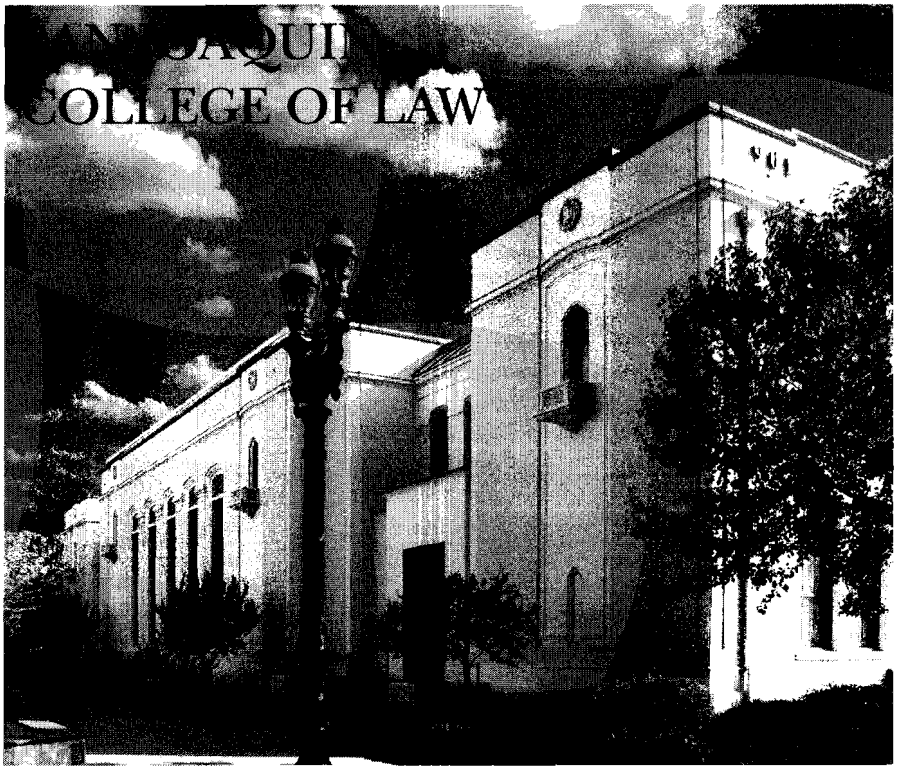
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FOREWORD

LISA A. CUTTS

Editor-in-Chief

The *San Joaquin Agricultural Law Review* is proud to celebrate 20 years of providing an objective, national forum for analyzing legal issues affecting our nation's most vital industry – agriculture. In the proud tradition of excellence carried forth since its inception in 1990, Volume 20 of the *San Joaquin Agricultural Law Review* continues to provide a forum to discuss topics of current interest to those in agriculture, government, business, and law. As a special feature of the 20th Anniversary Edition, we invited authors from the first ten volumes to pen an update on their piece, addressing how the law has, or has not, changed in that area and why. The *Law Review* was excited to have a response from an author from the very first volume. In addition, this volume includes special features, such as reproductions of the covers from the previous 19 Volumes, and an index of citation references.

Julian B. Heron, an attorney currently practicing with Tuttle, Taylor & Heron in Washington, D.C., wrote *New Challenges for California Agriculture in World Export Market*, with co-author David B. Friedman, for Volume 1 of the *San Joaquin Agricultural Law Review*. His current piece, *California Agriculture in World Export Markets Twenty Years Later*, explores the changes twenty years has made on an export market focused on Japanese and European markets, with a free-trade agreement with Mexico imminent. He quantifies the current export focus on China, the Asian-Pacific markets and Mexico, and a free-trade agreement on the horizon with Korea. He also explores the effect of the United States' participation in multi-national trade agreements on the California export market. Heron ultimately concludes that as long as California continues to adapt to the changing world market conditions, as it has for the last twenty years, it will continue to benefit from them.

A professor in the Department of Agricultural and Resource Economics at North Carolina State University, Theodore Feitshans' *An Analysis of State Pesticide Drift Laws Revisited*, explores the changes in pesticide drift laws since his original piece was published in the *San Joaquin Agricultural Law Review* in 1999. Acknowledging that there has been little research as to whether state laws on pesticide drift have been effective, he explores the fact that little has changed in these laws over the last twelve years, while technology has increased significantly. Additionally, he addresses how the situation has become complicated by the proliferation of genetically modified plants, and how recent Supreme Court decisions may impact state legislation in the area.

In her Comment, *No Longer Crying Over Surplus Milk: The Dairy Price Stabilization Program Act of 2010*, Managing Editor Ashley A. Allred discusses the volatility of dairy prices over the last century and a possible solution with the proposed Dairy Price Stabilization Program Act of 2010 (DPSPA 2010). The issue is explored through analysis of past attempts to stabilize dairy prices, why those attempts were unsuccessful, and how the DPSPA 2010 will differ. Specifically, this Comment analyzes dairy price fluctuations, legislative reactions to those fluctuations, and explores studies conducted using this data which show why the DPSPA 2010 will provide a more predictable market for the dairy industry. Additionally, she explores critical scrutiny of the DPSPA 2010 and explains how opponents may be relying more heavily on moral inclinations than objective analysis. She also contrasts the DPSPA 2010 to Canada's quota system and focuses on the major differences between the two. In conclusion, she offers a variety of benefits to the dairy industry and recommends that Congress enact the DPSPA 2010.

The dairy industry is the source of a significant amount of pollution and is subject to strict environmental regulations which require farm operators to take steps to mitigate their impact. Nicea Bates addresses the crossroads of these regulations and mitigation measures with eminent domain in *Just Compensation or Just Plain Unfair: The Effect of Eminent Domain on California Dairy Farmers*. Addressing how these regulations create a unique problem for California dairy farmers who lose part of their land through eminent domain, she shows that while some jurisdictions have enacted legislation which allows juries the flexibility to award such damages where injustice would otherwise result, the current scheme of compensation in California does not. She encourages the California legislature to adopt a system of compensation which would allow for damages to include: (a) fair market value of the property taken; (b) severance damages to compensate for the damage the taking has done to the market value of the remainder in the eyes of future dairy purchasers; and (c) damages for business damages and expenses when such damages are provable with reasonable certainty.

Sam Brar explores the issues of preemption in *The Federal Insecticide, Fungicide and Rodenticide Act: A New Look at Preemption After Bates*. For many years, the state tort claims of those seeking compensation for those injured personally or financially by exposure to pesticides has been preempted by federal law. The Federal Insecticide Fungicide and Rodenticide Act was understood by many courts to completely occupy the field of pesticide labeling regulation. Almost any claim under state tort law was construed as being inconsistent with FIFRA, as a plaintiff's success under such a claim would inevitably lead the pesticide manufacturer to change its label. In 2005, the Supreme Court of the United States, in *Bates v. Dow Agrisciences* reigned in the widespread preemption that had thus far prevailed. His Comment discusses the foundation of preemption, the long history of FIFRA preemption cases preceding *Bates*, and a detailed look at the *Bates* decision itself, including what impact that decision has already had on subsequent litigation.

In light of recent initiatives to legalize recreational marijuana, Notes & Comments Editor Rachel Cartier analyzes the current criminal implications of the cultivation, distribution, and use of marijuana in California. In *Federal Marijuana Laws and Their Criminal Implications on Cultivation, Distribution and Personal Use in California*, she shows how the analysis is based on medical marijuana, since a recreational legalization initiative will be subject to the same jurisdictional issues as medical marijuana. This is due to the federal government's strict ban on the use of marijuana and city/county regulation through zoning. These implications deviate greatly based on the jurisdictional splits in federal, state, and local laws. She concludes that while a California legalization bill has the potential for positive economic effects for the state, such an initiative is rife with risk for the entrepreneur who takes his chances with the possibility of federal enforcement action.

Lisa A. Cutts, Editor-in-Chief, reviews a recent Supreme Court decision in *What's the Big Deal? The Let-Down That is the Landmark Monsanto v. Geertson Case*. Noting that this could have been the first case really dealing with the issues of genetically modified crops in the United States, the case instead focuses on the use of injunctions as a remedy in National Environmental Policy Act cases, taking the Ninth Circuit to task for its near-automatic award of injunctions in such cases. She also addresses injunctions in detail, the decision-making processes by each of the courts, and explores each of the major issues raised, and how they were, or were not, considered by the courts at all levels. The decision also introduces some nuances to the issue of standing, and Cutts explores the impact these could have on future cases. She concludes with the fact that the case still leaves the large substantive issues inherent in the proliferation of genetically modified crops for some future controversy to decide.

Heather McCarthy Radcliffe, a student at Vermont Law School, delves into the practical impacts of a Sixth Circuit case to agricultural pesticide use in *Pesticides and Farmers: Life After National Cotton Council of America v. EPA*. Noting how farmers benefit from exemptions in

environmental law, and the impacts to the environment because of them, she discussed the series of decisions and the Environmental Protection Agency's Final Rule. This led to the Sixth Circuit decision vacating the Final Rule. She also discussed the Sixth Circuit case itself, including the parties' arguments, the court's reasoning, and the case's subsequent history. She also explores the general impact of this decision on farmers by evaluating the potential negative and positive consequences of the court's decision.

In *The Rightful Position: The BP Oil Spill and Gulf Coast Tribes*, Production Editor Erick Rhoan gives an overview of the environmental and agricultural damages done to Native American communities that inhabit the coastal areas of the Gulf of Mexico by the *Deepwater Horizon* oil spill. His Comment asks whether the Native American communities can obtain any meaningful remedies from common law or federal statutes. In answering this question, the Comment surveys prior case law that distinguishes harm to the individual versus harm to the community, ultimately determining that Gulf Coast tribes do not have an adequate remedy. The Comment concludes with an appeal to Congress to address these shortcomings.

In his Comment *The "National" Organic Program: The Inconsistent Standard of Wastewater Reuse*, Chester Walls discusses how treated wastewater from domestic sources is a viable alternative water source to help meet the increasing demand for agricultural products, but the regulation of wastewater reuse varies from state to state. Without federal regulation, states are free to set their own standards for reuse, which lead to inconsistencies among states due to varying policies. When a national program, such as the National Organic Program, applies state standards to supplement the lack of federal standards for wastewater reuse, products entering the stream of interstate commerce, under the guise of a national label, may be produced in full compliance with one state's standards, but in direct conflict with another's. He concludes that in order to combat this problem, and help the agricultural industry as a whole meet the water demands of the future, comprehensive federal regulation clearly defining a national standard is the best response, and is long overdue.

Channeling Cruella de Vil: An Exploration of Proposed and Ideal Regulation on Domestic Animal Breeding in California, by Christina Widner, explains the negative impact of puppy mills, not only to the dogs themselves, but also on a larger scale to society with pet overpopulation. After building a basis for the necessity of regulation, her Comment then attempts to establish some guidelines for proposed legislation aimed at limiting the negative effects of puppy mills. She discusses a vetoed California Assembly bill, the reasons for the veto, federal regulations and laws from other states in order to suggest guidelines that are practical and likely to fix this problem for California.

These Articles and Comments are offered to provide information, provoke discussion, and reflect the increasing complexity of legal issues facing agricultural interests across the nation. These are but a few of the varied and diverse issues confronted by those whose lives and interests are touched by agriculture.

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HISTORY OF THE SAN JOAQUIN AGRICULTURE LAW REVIEW

“As with any beginning, we had high hopes, but little promise of continuing success.” - Mark Blum, the Articles Editor for the first volume.²

The inaugural volume of the *San Joaquin Agricultural Law Review* was published in 1991. Inscribed on the back of the cover of the first volume reads this request: “[t]he Editors of the *San Joaquin Agricultural Law Review* invite contributions to a readers’ forum designed to encourage timely and informal exchange of ideas on legal scholarship addressed in recent legal publications.” With the publication of the twentieth volume of the *San Joaquin Agricultural Law Review*, the journal has realized the promise of continued success by meeting its goal of providing a forum for the exchange of ideas on legal scholarship over the past twenty years.

Numerous individuals, from faculty, local and non-local attorneys, members of the bench, and many other active members and organizations in the community can be credited with the creation of the *San Joaquin Agricultural Law Review*. Acknowledgment of every individual who was critical in the original formation of the *San Joaquin Agricultural Law Review* is beyond the scope of this brief overview. However, the members, past and present, thank all who have been instrumental over years in the creation and continued success of this Law Review.

The journal was initially formed by Professors Douglas Noll and John Evans, two full time faculty members, in 1990. With his previous Law Review experience, Mr. Noll guided the process during the early stages of the journal. Mr. Evans was instrumental in raising the necessary funds for the initial volume by forming an Advisory Board. The Borba Family was also active in providing financial support for the fledgling journal and this continued support has enabled the journal to grow over these last twenty years. However, Mr. Bill Richert, a former law partner of Mr. Noll, was one of the prominent forces behind the creation of the journal. Mr. Richert’s legacy continues today as the *San Joaquin Agricultural Law Review* office located in the San Joaquin College of Law’s current home is named after him.

Primarily, the *San Joaquin Agricultural Law Review* was established because a Law Review experience was deemed necessary for the development of the law school and to provide students a more traditional and comprehensive law school experience. A much simpler task, however, would be the decision on what would constitute the journal’s topical theme. At the time the *San Joaquin Agricultural Law Review* was conceived, there was only one other Law Review that focused principally on agriculturally based legal topics, so this area was a fertile source of discussion. Therefore, a focus on agriculturally centered legal issues was a natural fit for a journal that was located in the heart of a vibrant agricultural community such as San Joaquin Valley. The numerous agriculturally-based businesses, as well as the desire to fill a highly relevant but under represented niche of legal scholarship, made for fertile ground on which to plant the seeds of the new journal. Even today, the *San Joaquin Agricultural Law Review* prides itself on being one of a handful of legal journals that emphasizes legal issues that impact the agricultural community.

1 Special thanks to Douglas Noll, Rose Mohan, and Mark Blum for their contributions, which enabled the author to complete this piece.

2 Mark Blum, Articles Editor for Volume 1 of the *San Joaquin Agricultural Law*, comments on the first Editorial Board’s hopes for the newly established journal.

For this fledgling journal, the next task of critical importance was the formation of the first Editorial Board. Unlike an established law review program, the *San Joaquin Agricultural Law Review* members did not have the benefit of coming up through the ranks of an existing institutional Law Review culture, where incoming students would receive guidance and direction. The initial Editorial Board members were recruited by the faculty. The first board was comprised of the following individuals: Rose E. Mohan, Editor-in-Chief; David J. Weiland, Managing Editor; James A. Dubbels, Executive Editor; Mark A. Blum, Articles Editor; Mary L. Rogers, Notes and Comments Editor; and Marlene A. Hubbell, Production Editor. For many of these outstanding individuals law was to be a second career, so most of them worked full time and raised families while they were in the process of laying the foundation of a Law Review at San Joaquin College of Law. Although this initial group of editors did not have the benefit an established Law Review culture, they were all invested in enhancing the already solid reputation of San Joaquin College of Law, and they received a significant amount of mentoring, guidance and assistance from Professors Douglas Noll, Sally Perring, and current Dean Janice Pearson. Thanks in large part to the strong investment and outstanding performance by this initial editorial board, faculty advisors and other benefactors of Law Review, a solid foundation and a tradition of excellence were established that enable the journal to not only endure, but thrive.

The *San Joaquin Agricultural Law Review's* primary goal was to provide a forum for law students and legal professionals to discuss the pertinent issues of interest to the agricultural legal community. This is not to say that the journal has been without controversy by publishing articles or comments that were not in accord with the desires of the agricultural community. However, over the past twenty years the *San Joaquin Agricultural Law Review* has been cited in numerous judicial opinions, legislative materials necessary for the formation of various statutes, and within the pages of other journals. Accordingly, the journal has done an amazing job of achieving its goal of providing a forum on agriculturally based legal issues and, at times, helping to shape the diverse body of law that concerns agricultural interests.

KYLE ROBERSON