

SAN JOAQUIN AGRICULTURAL LAW REVIEW



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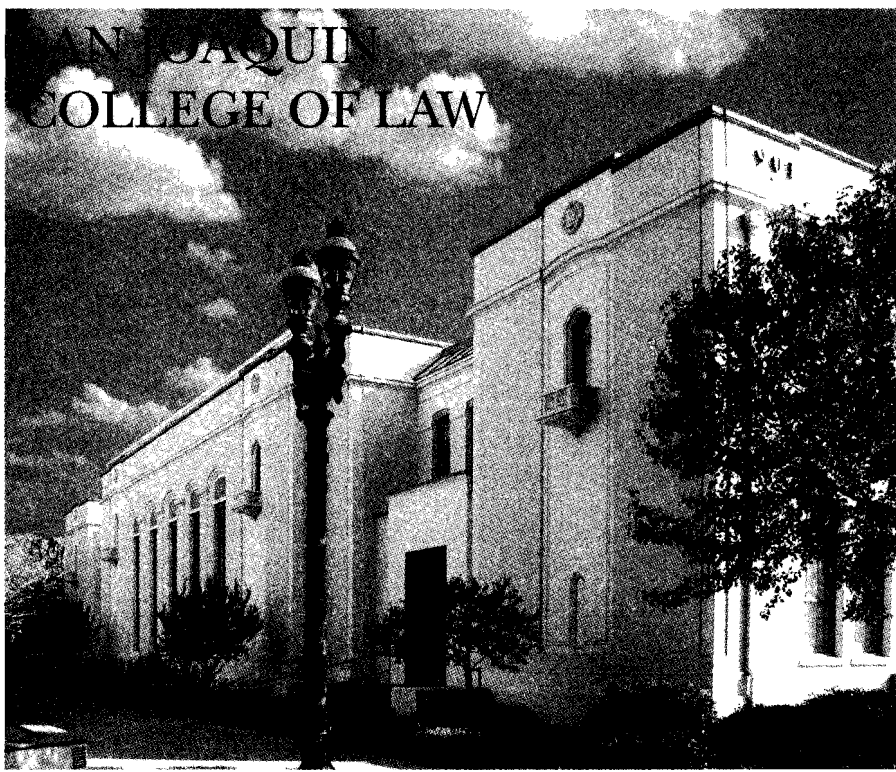
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FOREWORD

ADAM STIRRUP

Editor-in-Chief

The *San Joaquin Agricultural Law Review* provides 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 17 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.

Professor Jesse J. Richardson, Jr., Professor of Urban Affairs and Planning at Virginia Tech and a member of the Virginia and West Virginia Bars, wrote the Article, *Conservation Easements and Ethics*. In the Article, Professor Richardson uses hypothetical fact patterns to explore ethical issues that arise in the context of conservation easements. The issues are explored from the viewpoint of attorneys, appraisers, landowners, and landtrusts. The Annotated Model Rules of Professional Conduct, the Uniform Standards of Professional Appraisal Practice, case law, and general ethical standards are used to glean some guidance as to proper conduct in these situations.

Gary L. Winter, J.D., a member of the California Bar, is an alumnus of San Joaquin College of Law and a Member of the *San Joaquin Agricultural Law Review*. Mr. Winter's Article, *Does a Williamson Act Contract Have Constitutional Status?*, explores the origins and potentially undesirable consequences of claims of constitutional status for California land conservation contracts. The Article suggests that, like any other contract, a Williamson Act contract may be enforced whether it is performed, breached, rescinded or cancelled. To hold otherwise is to create a duty where a contract should be.

Currently, the County of Kern, California, is obligated under the Court's interpretation of the Dormant Commerce Clause to accept potentially harmful sewage sludge brought from nearby urban municipalities, such as Los Angeles, to be spread on farmland. In the Comment, *Does the Dormant Commerce Clause Require a Farming Community to Accept Big City Sludge as a Fertilizer for Crops?*, Brianna Ellis discusses the safety concerns and federal law related to sewage sludge, and the ordinances passed by Kern County to stop its importation. She also analyzes the federal court case that invalidated the most current ordinance, and argues that in light of the recent heightened atmosphere of environmental awareness, a policy change in the interpretation of the Dormant Commerce Clause, with regard to the acceptance of waste, is necessary.

In his Comment, *Market Share Liability Shouldn't Die: Proposed Application to Agricultural Pesticides and the Need to Refine the Apportionment of Liability*, Benjamin Greer examines the jurisdictional definitions and applications of market share liability. The Comment focuses on the court's reluctance to extend market share liability beyond injuries derived from DES drug exposure and proposes a better method of apportioning damages. He recommends extending the jurisprudence of market share liability to injuries derived from agricultural pesticides and that a profit share factoring component be implemented to equalize the jurisdictional swings, rendering more fair and just outcomes. Under a profit share factoring analysis, market share percentage would be used as a baseline with the ability to adjust liability up or down according to a defendant's profits from the product.

Bryce Hatakeyama's Comment, *Massachusetts v. Environmental Protection Agency and the Organic Movement: Can The "USDA Organic" Label Save Us From Nitrous Oxide?*, examines how the 2007 Supreme Court ruling in *Massachusetts v. Environmental Protection Agency* may

have provided USDA organically certified producers a way of promoting a national shift from conventional farming practices to organic farming practices. In his exploration of the topic, the Comment discusses the history of the organic movement, the shortcomings of the Organic Food Production Act, and the current interpretation of the Clean Air Act. The Comment concludes that a national shift is possible only if the government both strengthens the laws regulating the certification of organic products and interprets the Clean Air Act as empowering the government to regulate greenhouse gas emissions from conventional farms.

In her Comment, *Protecting Farmers from Global Warming: California Faces Legal Challenges Regulating Greenhouse Gases*, Leanne Kent discusses California's response to growing climate change concerns, specifically emission standards placed on energy companies, as presented in Senate Bill 1368. The legislation prohibits an electric service provider from entering into long-term contracts unless the power plant complies with the greenhouse gas performance standards determined by California Energy Commission. The Comment examines the motives behind the enactment of the Senate Bill and its implications for California's agriculture industry. It also discusses whether the legislation withstands the challenge of federal preemption.

In her Comment, *Constitutional Standing Based on California's Agricultural Industry*, Alexia Kirkland examines the Supreme Court's decision to grant standing to the State of Massachusetts in an action against the EPA based on an injury resulting from global warming. California has tried to enforce actions against the EPA, but has lacked an injury sufficient for standing. The Comment discusses whether California could have an injury sufficient for standing if it made a showing of specific crop loss, water shortages, and potential economic loss associated with global warming. The Comment concludes that once an injury is established, California could request the Court to apply special solicitude, which would allow the State to proceed with the lawsuit.

Stephen Malm's Comment, *Love's Labors Lost: Achieving the Promise of California Agriculture by Cultivating an Improved Response to California's Theft of Labor Problem*, examines the problem of wage theft from the state's farm workers who pursue the promise of California agriculture as a pathway to economic self-sufficiency. The Comment finds an interrelationship between other state problems like crime and poverty and attributes much of the failure of state efforts to a lack of political voice of those on the lowest rung of the economic ladder. By examining the legislative history of parallel provisions of the Labor Code and California's criminal theft provisions which encompass theft of labor, the Comment finds support for the sure prosecution and deterrence of continuing violations for nonpayment of wages in accord with the intent of the legislature.

In her Comment, *Farm Labor Vehicle Safety in California*, Heather Phillips argues for greater accountability for the unsafe transportation of the thousands of agricultural workers in the Central Valley. The Comment examines the well intentioned, yet failed, attempts to provide safe transportation to the Central Valley's agricultural workers. Finally, the Comment outlines the framework for a cause of action against farm labor contractors under the federal Racketeer Influenced and Corrupt Organizations Act.

In her Comment, *Honeybee Nice to Your Neighbors: Solutions to the Dispute Between Beekeepers and Citrus Growers in California's San Joaquin Valley*, Kathleen Phillips addresses the conflict which arose when seedless mandarin growers alleged trespassing bees caused seeded fruit and lower market prices. The Comment examines nuisance, right-to-farm statutes and apiary protection statutes as related issues, and outlines various international and botanical solutions. Assembly Bill 771 is discussed, including a critique of mandated conflict resolution and regulations created by the Secretary of the Department of Agriculture should the parties fail to reach a compromise.

In her Comment, *Are Biofuel Crops the Next Kudzu?*, Karen Ray discusses why there is a need for renewable energy in the form of biofuel crops and explains how biofuel-related legislation is increasing the speed of biofuel production without taking into consideration the magnitude of the already existing invasive species problem in the United States. The Comment compares how similarly the nation is responding to biofuel crops as an ecological solution, just as the nation responded to kudzu. The current federal and state invasive species laws and regulations are discussed as well as identifying the significant gaps that would need to be addressed if biofuel crops escape cultivation and become invasive. The Comment also discusses mandating safeguards as well as a possible involvement of National Environmental Protection Act for biofuel crops.

In *The Future of Logging in the Giant Sequoia National Monument*, Matt Schmidt contrasts a recent judicial decision against the persistent tension between natural resource use and preservation. Through a discussion of the historical origins of the struggle, as well as an examination of the precursory events leading to litigation, the Comment develops support for several viable options as a possible resolution to a contemporary issue.

Elizabeth Waldow's Comment, *Finding Nexus – Proximity and Causation: Authority For Clean Water Act Jurisdiction Beyond Traditional Navigable Waters*, discusses the divided Supreme Court Justices' opinions in *U.S. v. Rapanos* that have left the lower courts and federal agencies with confusing guidance in implementing Clean Water Act federal jurisdiction. As the Environmental Protection Agency attempts to interpret Justice Kennedy's "nexus" requirement and Justice Scalia's stricter interpretation the confusion is not resolved. Applying federal jurisdiction beyond traditional waters and adjacent wetlands may be called for where there can be shown significant impact on the waters of the U.S. The Comment concludes that a determination of impact should be founded on the relevant scientific inquiry.

Extreme heat affects agricultural workers in California and contributes to heat-related illness, reducing the productivity of the industry. In her Comment, *Extreme Weather Events and Heat-Related Illness in Outdoor Employment*, Heather Ward suggests a stricter regulation in California for heat-related illness based upon evidence of global warming trends.

In her Comment, *Methamphetamine and Cocaine Manufacturing Effects on the Environment and Agriculture*, Cheri-Lynn Wortham discusses the effects that manufacturing methamphetamines has on agriculture and how processing cocaine in South America effects global warming and climate change. The Comment examines the United States federal government involvement in the eradication of coca in Colombia and funding provided to Colombian farmers to rebuild their land. It also reviews state and federal assistance given to American farmers, whose land has been destroyed by methamphetamine lab dumps and waste. The Comment argues that the Colombian farmers receive United States funds for the destruction of their crops, livestock, and land, therefore the American farmers should receive compensation for their losses.

The 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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