ARTICLE


COMMENTS

DOWNED ANIMALS: CAN YOUR STEAK STAND UP FOR ITSELF? Kevin Briley

DUST IN THE WIND: WILL NEW ENVIRONMENTAL REGULATIONS MEAN MORE LIABILITY CLAIMS? Scott L. Jones

CALIFORNIA RAISINS: COMPLIANCE WITH THE FEDERAL MARKETING ORDER AND URUGUAY ROUND AGREEMENT ON AGRICULTURE. Stacie L. Melikian

Mandatory Mediation and Conciliation in California Thomas Casa

Workers’ Compensation Reform and the Future of the Disabled Farm Worker in California Connie M. Valentino-Parker

Groundwater: Uniform Control of a Critical and Limited Resource Gayle Rousey


Agricultural Accountability: The National Animal Identification Plan, Confidentiality and the Freedom of Information Act Amy K. Guerra

Cleaning the Air at the Dairy: Dairy Permitting in the San Joaquin Valley and the Controversy Surrounding the Science Elizabeth A. McGee

SAN JOAQUIN COLLEGE OF LAW
San Joaquin College of Law offers assistance to employers who are seeking associates, law clerks, interns, or paralegals. This free service provided by the placement office helps to link students and alumni to employers, thus easing the process for all involved.

Full-time and part-time job listings are maintained at the Law School.

For more information, please contact Cheryl Castro, Director of Placement Services.

559/323-2100

Continuing to serve as a community resource!
The San Joaquin Agricultural Law Review (ISSN 1055-422X) is published annually by the students of The San Joaquin College of Law. The San Joaquin Agricultural Law Review prints all matter deemed meritorious regardless of the views expressed. Views expressed herein are views of the authors and do not necessarily reflect the policies or opinions of the Law Review, its editors and staff, or San Joaquin College of Law.

Manuscripts:
The San Joaquin Agricultural Law Review welcomes the submission of unsolicited articles, comments, reviews, and case notes. To be considered for publication in a future issue of the San Joaquin Agricultural Law Review, manuscripts must be submitted on CD-ROM in Corel WordPerfect 10 or Microsoft Word 2000 or XP format accompanied by a single hard copy. Text and footnotes must appear in 12-point Times New Roman typeface printed on one side of each page. Text must be double spaced, left justified, with one-inch margins, and the initial word of each paragraph must be indented. Footnotes must be single spaced with double spacing between footnotes, left justified, and appear at the bottom of each page. Text and footnote citations should conform with the rules set forth in The Bluebook: A Uniform System of Citation (18th ed. 2005).

Manuscripts should be submitted to the Executive Editor at the address indicated below. If any portion of a manuscript has been published previously, or is to be published elsewhere, such information must be disclosed at the time of submission of the manuscript to the Law Review. Manuscripts cannot be returned. The Law Review will not assume responsibility for lost manuscripts.

Correspondence:
Correspondence should be addressed to the Managing Editor at the address indicated below.

Change of Address:
The Postal Service will not forward copies. The Law Review will make reasonable efforts to notify subscribers if their issue cannot be delivered by the Postal Service and is returned. Please notify the Law Review if you do not receive your issue. Please submit address changes as soon as possible to ensure prompt delivery. The Law Review will not send duplicate copies without additional charge if nondelivery is based upon a change of address without notification. Address changes should be sent to the Production Editor at the address indicated below.

Please send address changes to:
San Joaquin Agricultural Law Review
William T. Richert Law Review Office
San Joaquin College of Law
901 Fifth Street
Clovis, CA 93612

Printed by Darby Printing Co., 6215 Purdue Dr., Atlanta, GA 30336.

Please cite this issue as: 15 S. J. Agric. L. Rev. 1 (2006).
SAN JOAQUIN
AGRICULTURAL LAW REVIEW

VOLUME 15  2005-2006  NUMBER 1

BOARD OF EDITORS*

Marcella Downing-Hawk
Editor-in-Chief
Claire S. Carrol
Production Editor
Hallie S. Ambriz
Managing Editor
Marianna R. Chaffin
Executive Editor

STAFF MEMBERS

Scott Jones
Sherrie Flynn
Stacie Melikan

BOARD OF EDITORS†

Marianna R. Chaffin
Editor-in-Chief
Stacie L. Melikan
Managing Editor
Scott L. Jones
Production Editor

STAFF MEMBERS

Rachel Berglund Bailey
Connie M. Valentino-Parker
Dede J. Agrava

FACULTY ADVISORS

Sally Perring
Lawrence M. Artenian
Jeffrey G. Purvis

* Board for 2004-2005 year.
† Board for 2005-2006 year.
SAN JOAQUIN COLLEGE OF LAW
BOARD OF TRUSTEES

DOUGLAS NOLL, J.D.
Peacemaker
Chair

HON. JAMES A. ARDAIZ
Presiding Justice, California Court of Appeal, Fifth Appellate District
Vice Chair

 JOHN E. LOOMIS, J.D., Retired Founder of San Joaquin College of Law, Secretary/Treasurer
 LAWRENCE M. ARTENIAN, J.D., Professor of Law, Faculty Representative
 ROSS BORBA JR., Borba Farms
 RICHARD CAGLIA, J.D., Attorney at Law
 HON. JANE CARDOZA, Judge, Fresno Superior Court
 DEBORAH ANN GOE, J.D., Baker, Manock & Jensen
 CAROL SMITTCAMP COPELAND, Businesswoman
 GREG DURBIN, J.D., McCormick, Barstow, Sheppard, Wayte & Carruth
 EDWARD D. FANUCCI, J.D., Quinlan, Kershaw & Fanucci
 TRACI FRITZLER, J.D., Deputy District Attorney, Fresno County
 JAN KAHN, J.D., Kahn, Soares & Conway
 KATHLEEN MCKENNA, Alumni Representative, California Department of Justice
 ELIZABETH O'NEILL, J.D., Arbitrator, Mediator, & Evaluator
 HON. ROBERT OLIVER, Judge, Fresno Superior Court
 SUSIE OSTFIEG, Businesswoman
 WANDA L. ROGERS, President, Rogers Helicopters
 SHANNON PELL, President, SJCL Student Bar Association (2005)
 ERIK PETERSEN, President SJCL Student Bar Association (2006)
 DENNIS VEEH, CPA, Baker, Peterson & Franklin
 DR. VIVIAN VIDOLI, Dean of Graduate Studies, California State University, Fresno
 DAVID WEILAND, J.D., Dowling Aaron & Keeler

NATIONAL EDITORIAL BOARD

DALE CUNNINGHAM, Retired, Sunkist Growers, Inc.
WILLIAM T. DAVOREN, Aral Sea Information, Committee
DONALD A. FREDERICK, Rural Business-Cooperative Service, USDA
ED GERMAN, J. G. Boswell Co.
JULIAN B. HERON, JR., Tuttle, Taylor & Heron
KENDALL L. MANOCK, Baker, Manock & Jensen
JAMES T. MASSEY, James T. Massey Law Offices
MICHAEL McLEOD, McLeod, Watkinson & Miller
JEAN-MARIE PELTZER, EPA Counselor to the Administration on Ag Policy
GEORGE E. RADOSEVICH, Colorado State University
LORETTA RAMSEYER, Retired, Bank of America
LELAND H. RUTH, California Electric Users Cooperative
KIM SCHINDOR, Robinson, Lake & Lever
LELAND SWENSON, National Farmers Union
ROBERT TAYLOR, Tuttle, Taylor & Heron
GREGORY A. THOMAS, Natural Heritage Institute
JOHN WHETTEN, Challenge Dairy Products, Inc.
FACULTY, ADMINISTRATION AND STAFF

JANICE L. PEARSON, B.A., J.D., Dean and Professor of Law
SALLY A. PERRING, B.A., J.D., Associate Dean for Academic Affairs and Professor of Law
LAWRENCE M. ARTENIAN, B.A., J.D., Professor of Law
RICHARD M. CARTIER, B.A., J.D., Professor of Law
DENISE M. KERNER, B.A., M.A., J.D., Professor of Law
JEFFREY G. PURVIS, B.A., J.D., Professor of Law
JOYCE MORODOMI, Director of Student Services
LONZETTA HIGHTOWER, Student Services Assistant
DONALYN CARLSON, Recruitment Specialist
SHERYL CASTRO, Director of Paralegal Program and Director of Placement Services
JEANNIE LEWIS, Director of Financial Aid
JOAN LASHLEY, Alumni Association and Facilities Administrator
KASI WELTE, MSLE Coordinator and Administrative Assistant to the Deans
THOMAS CANAR, Chief Advancement Officer
KEN COYLE, MIS Director
TARA CRABTREE, Interim Library Director
MARK ENNS, Director of Marketing and Public Relations
MEGAN FULLER, Library Assistant
MAUREEN HAYES, Assistant to Chief Financial Officer
RICK RODRIGUEZ, Maintenance Supervisor
JILL WALLER-RANDLES, Chief Financial Officer
PATRICIA SMITH, Financial Services Specialist
GWEN WATT, Regulatory Compliance Officer

ADJUNCT FACULTY OF LAW

ART BAGGETT, B.S., M.S., J.D.
HRISTO K. BIEV, M.A., M.A., M.I.C.L.
DAVID M. CAMERON, B.A., J.D., M.B.A.
JONATHAN B. CANNEKIN, B.A., J.D.
MARK E. CULLERS, B.A., J.D.
MATTHEW FARMER, B.A., J.D.
JASON P. HAMM, B.A., J.D.
KATH KESSELMAN, B.A., J.D.
JEFF MANNING-CARTWRIGHT, B.A., M.A., J.D.
MARK D. MILLER, B.S., J.D.
KIM NYSTROM-GEIST, B.A., J.D.
MICHAEL SHELTZER, B.A., J.D.

BARRY J. BENNETT, A.B., J.D.
STANLEY A. BOONE, B.A., J.D.
HON. HILARY A. CHITTICK, B.A., J.D.
PHILLIP S. CRONIN, J.D.
JOHN P. ELEAZARIAN, B.A., M.A., J.D.
CHRISTINE GOODRICH, B.A., J.D.
ALLAN E. JUNKER, B.S., J.D.
WILLIAM T. McLAUGHLIN II, B.S., J.D.
MICHAEL P. MALLERY, B.A., J.D.
DOUGLAS E. NOLL, B.A., J.D., M.A.
ROSE SAFARIAN, B.A., J.D.
HON. MARK SNAUFFER, B.A., J.D.
FOREWORD

MARCELLA DOWNING-HOWK
Editor-in-Chief, 2004-2005

The San Joaquin Agricultural Law Review is committed to providing an objective, national forum for analyzing legal issues affecting agriculture. Volume fifteen of the San Joaquin Agricultural Law Review continues this commitment.

The link between downed animals, animals incapable of walking, and BSE is explored by Kevin Briley in his comment, Can Your Steak Stand Up for Itself? Mr. Briley argues that the Ackerman-Latourette Amendment should be passed mandating the United States Department of Agriculture to exclude these animals from the food supply.

In his comment, Mandatory Mediation and Conciliation in California, What is so Conciliatory About Mandatory Mediation in the ALRA?, Thomas Casa argues that California’s Agricultural Labor Relations Act and its mandatory arbitration amendments is necessary to provide the farm worker with the ability to organize in labor unions and achieve collective bargaining agreements with the agricultural industry.

The nation’s leading agricultural producers are facing increasingly stringent enforcement of environmental regulations as they apply to airborne particulate matter. In his comment, Dust in the Wind, Scott Jones explores the increased exposure farmers and their insurers face to this heightened tort liability.

California raisin producers who export their raisins are subject to provisions of the Federal Marketing Order and the World Trade Organization under the Uruguay Round Agreement on Agriculture. Stacie Melikian explores the conflicts and inconsistencies between these agreements in her comment, California Raisins: Compliance with the Federal Marketing Order and the Uruguay Round Agreement on Agriculture and suggests that participation in the Horticultural Organizations for Responsible Trade (HORT) Alliance may provide a means of reconciling these issues.

The professional article and the comments included in this volume reflect the increasing complexity of legal issues related to agriculture both domestically and internationally. We offer these topics for our readers’ consideration and welcome submissions of alternate legal arguments.

MARIANNA R. CHAFFIN
Editor-in-Chief, 2005-2006

The 2005-2006 San Joaquin Agricultural Law Review Editorial Board is pleased to present its portion of Volume 15 which consists of one professional Article and five student Comments. The professional Article in Volume 15 is presented by Shannon L. Chaffin. Mr. Chaffin received his Bachelor of Arts from Hillsdale College, Michigan, in 1997, where he graduated magna cum laude with a double major in Political Economics and History. He subsequently attended J. Reuben Clark Law School at Brigham Young University, in Provo, Utah, where he was a member of the Board of Advocates and graduated with honors in 2000. Mr. Chaffin relocated to Fresno, California, and began practicing law at Dietrich, Glasrud, Mallek and Aune in the area of complex business litigation. Mr. Chaffin is currently a Deputy City Attorney with the City of Fresno, where his practice emphasis remains in litigation. His Article, Loss of Integrity May Mean Loss of the Farm: False Statements Made in Federal Water Subsidy Applications and the Doctrine of Judicial
Estoppel, studies the impact of statements made under the penalty of perjury in administrative applications and proceedings, and examines the role of judicial estoppel in connection with the subsequent application of those statements in independent judicial proceedings.

Connie Valentino-Parker’s Comment, Workers’ Compensation Reform and the Future of the Disabled Farm Worker in California, provides a review of Senate Bill 899. The focus of the Comment is on how emergency legislation failed to anticipate and respond to the adverse impact it would have on agricultural and similarly situated workers. It further discusses the agricultural demographic in conjunction with the California workers’ compensation system, and invites reconsideration of the latest reform measures so that the needs of disabled agricultural workers, guaranteed by Article 14, Section 4 of the State Constitution, are not overlooked.

In Groundwater: Uniform Control of a Critical and Limited Resource, Gayle Rousey discusses the problem of aggressive competition by various competing interests such as farmers, local governments, bottled water companies and environmental bodies, for the rights to California groundwater. She argues that groundwater, a valuable resource that merits serious and critical attention by the California legislature, must be protected through the enactment of statewide regulations, which should replace current piecemeal measures.

Rachele Berglund Bailey presents timely research that an estimated percent of foods found on American grocery store shelves are genetically modified or contain genetically modified ingredients in A Tale of Two Systems: A Comparison Between U.S. and EU Labeling Policies of Genetically Modified Foods. The Comment details the policies and rationale of U.S. and European Union labeling policies of genetically modified foods by comparing and contrasting the two systems. Finally, the Comment recommends that the United States adopt a mandatory labeling policy to more adequately balance the competing interests of agriculture, science, and consumers.

In her Comment Agricultural Accountability: The National Animal Identification Plan, Confidentiality and the Freedom of Information Act, Amy K. Guerra examines the accessibility of information collected under a proposed National Identification Plan. The Comment discusses future participants’ concern over the disclosure of confidential information under the Freedom of Information Act and looks at the potential health and safety implications of non-disclosure. Using proposed legislation as a basis, the Comment finally suggests potential opportunities for compromise, which would allow for both government transparency and privacy for participants.

Elizabeth A. McGee’s Comment, Cleaning the Air at the Dairy: Dairy Permitting in the San Joaquin Valley and the Controversy Surrounding the Science, addresses SB 700 which has begun the implementation of strict air pollution laws throughout various air districts within the state. The Comment specifically discusses the San Joaquin Unified Air Pollution Control District, which adopts and enforces permitting regulations applicable to dairy operations within the boundaries of the District, and argues that significant legal issues are raised as these regulations are based on newly-adopted, questionable standards.
ACKNOWLEDGMENTS

The following San Joaquin College of Law Students contributed to the production of the San Joaquin Agricultural Law Review, Volume 15:

BENNY BARCO  RACHELE BERGLUND BAILEY  DOUG HARRISON
RICK HOROWITZ  STEVE MALM  MARJORIE WEBB
ELIZABETH A. MCGEE  GAYLE ROUSEY  JEREMY SNELL
SHANNON RANSBERGER  JODY WINTER  ANDREW ALLER
GARY L. WINTER  MARK KING  SHANTELLE ANDREWS
SHERRIE FLYNN  ERIK PETERSON  MARY CASTRO
LISA LERMA  AMY K. GUERRA  BOB ABRAMS
BROOKE SORENSEN  CONNIE M. VALENTINO-PARKER  ADAM STIRRUP
DEDE J. AGRAVA  ERRIN WOODWARD  SHAWN OLSEN
PATRICK McMANAMAN

The staff at the San Joaquin Agricultural Law Review would like to extend a special thanks and acknowledgment to the following people for exceptional assistance and contribution to the production of Volume 15:

RICK HOROWITZ  DEDE J. AGRAVA  ELIZABETH A. MCGEE
GARY L. WINTER  JODY L. WINTER  GAYLE ROUSEY
TERESA PETTY  RACHELE BERGLUND BAILEY  AMY K. GUERRA
BROOKE SORENSEN  CONNIE M. VALENTINO-PARKER  SHANTELLE ANDREWS
# TABLE OF CONTENTS

## ARTICLE

**Loss of Integrity May Mean Loss of the Farm: False Statements Made in Federal Water Subsidy Applications and the Doctrine of Judicial Estoppel.** Shannon L. Chaffin, Esq.  

## COMMENTS

**Downed Animals: Can Your Steak Stand Up For Itself?** Kevin Briley 39  
**Dust in the Wind: Will New Environmental Regulations Mean More Liability Claims?** Scott L. Jones 63  
**California Raisins: Compliance With the Federal Marketing Order and Uruguay Round Agreement on Agriculture.** Stacie L. Melikian 89  
**Mandatory Mediation and Conciliation in California.** Thomas Casa 117  
**Workers' Compensation Reform and the Future of the Disabled Farm Worker in California.** Connie M. Valentino-Parker 143  
**Groundwater: Uniform Control of a Critical and Limited Resource.** Gayle Rousey 169  
**Agricultural Accountability: The National Animal Identification Plan, Confidentiality and the Freedom of Information Act.** Amy K. Guerra 213  
**Cleaning the Air at the Dairy: Dairy Permitting in the San Joaquin Valley and the Controversy Surrounding the Science.** Elizabeth A. McGee 235

---

*Copyright © 2006 by San Joaquin College of Law*