# SAN JOAQUIN AGRICULTURAL LAW REVIEW



VOLUME 9 1999 NUMBER 1

# **ARTICLES**

The Land Conservation Act at the 32 Year Mark: Enforcement,	
REFORM, AND INNOVATION	Dale Will
An Analysis of State Pesticide	
Drift Laws	Theodore A. Feitshans
COMME	NTS
The Effect of <i>Glickman v. Wileman</i>	
Brothers & Elliott, Inc. on	
Nongeneric Commodities: A	
NARROW FOCUS ON A BROAD RULE	Deborah K. Boyett
THE SEVEN DEADLY SINS OF MSPA JOINT	
EMPLOYER LIABILITY: STRICT	
LIABILITY, THE DEPARTMENT OF	
Labor's Hidden Agenda!	Gary D. Brunsvik
TELEMEDICINE: THE CURE FOR CENTRAL	
California's Rural Health Care	
Cpieie'?	Ann Davis Roberts

# Placement Services

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.

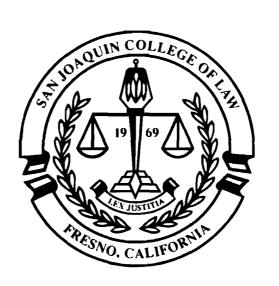


Continuing to serve as a community resource!

For more information,
please contact
Pam Ramirez
Director of Placement Services

559/323-2100

901 Fifth Street Clovis, CA 93612-1312



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 3-1/2" computer diskettes in WordPerfect 5.1 or 6.0 IBM-compatible 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 (16th ed. 1996).

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.

#### Subscriptions:

Subscriptions are \$12.00 per volume and are payable in advance. Requests for subscription information should be sent to the Production Editor at the address indicated below. Subscriptions will be continued for succeeding issues and subscribers will be billed unless notice of cancellation is received.

#### 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 93612-1312

Printed by Darby Printing Co., 6215 Purdue Dr., Atlanta, GA 30336. Please cite this issue as: 9 S. J. Agric. L. Rev. (1999).

# SAN JOAQUIN AGRICULTURAL LAW REVIEW



VOLUME 9 1999 NUMBER 1

# **BOARD OF EDITORS**

SUZANNE D. McGuire

Editor-in-Chief

GEORGE HENRY HERMAN III

Executive Editor

KATHLEEN A. McGURTY

Managing Editor

MICHELLE G. OLEKSA

ANN DAVIS ROBERTS

Production Editor

Notes and Comments Editor

GARY D. BRUNSVIK Articles Editor

## **STAFF MEMBERS**

DEBORAH K. BOYETT

ROD L. KODMAN

LAURIE MITCHELL

DAVID A. SOLDANI

# **FACULTY ADVISORS**

SALLY A. PERRING

Associate Dean for Academic Affairs

and Professor of Law

LAWRENCE M. ARTENIAN

Professor of Law

RICHARD M. CARTIER

Professor of Law

DENISE M. KERNER Professor of Law

JEFFREY G. PURVIS Professor of Law

# NATIONAL EDITORIAL BOARD

DALE CUNNINGHAM, Sunkist Growers, Inc. WILLIAM T. DAVOREN, Aral Sea Information Committee BURTON ELLER, National Cattlemen's Association DONALD A. FREDERICK, Agricultural Cooperative Service, USDA ED GIERMAN, J.G. Boswell Co. STEPHEN HEINRICHS, Blue Diamond Growers, Inc. JULIAN B. HERON, JR., Tuttle & Taylor KENDALL L. MANOCK, Baker, Manock & Jensen JAMES T. MASSEY, James T. Massey Law Offices MICHAEL McCLEOD, McCleod, Watkinson & Miller JEAN-MARI PELTIER, California Pear Growers GEORGE E. RADOSEVICH, Colorado State University LORETTA RAMSEYER, Retired, Bank of America LELAND H. RUTH, Agricultural Council of California KIM SCHNOOR, Robinson, Lake & Lerer LELAND SWENSON, National Farmers Union ROBERT TAYLOR, Tuttle & Taylor GREGORY A. THOMAS, Natural Heritage Institute JOHN WHETTEN, Challenge Dairy

### ADVISORY COMMITTEE

MICHAEL ABRIL, Borton, Petrini & Conron

BRUCE ALLBRIGHT, Allbright Agency

DENNIS BEAN, Dennis Bean and Co.

BARRY BEDWELL, Allied Grape Growers

GEORGE BELYEA, Moore, Grider & Co.

PAUL BETANCOURT, VF Farms

THOMAS BIRMINGHAM, Kronick, Moskovitz, et al.

ROSS BORBA, JR., Borba Farms

THOMAS CAMPAGNE, Thomas Campagne & Associates

CHRISTOPHER CAMPBELL, Baker, Manock & Jensen

LLOYD CARTER, Office of the Attorney General

ROBERT CASSIO, Robert Cassio, Inc.

WILLIAM B. COIT, Coit Farming Company

VERNON CROWDER, Bank of America

DAVE DEFRANK, Anderson Clayton Co.

JAMES DEMSEY, Thomas, Snell, Jamison, Russell & Asperger

OCTAVIA DIENER, Densmore Engines
KENNETH FRANSEN, Bolen, Fransen & Boostrom

BILL FRISCH, Kings River Community College

DAN GERAWAN, Gerawan Farming

VICTOR HANSON, California State University, Fresno

JOHN C. HARRIS, Harris Ranches

IMA JEAN HARVEY, Parichan, Renberg, Crossman & Harvey

CHARLES HOYT, Charles Hoyt Company

LIZ HUDSON, Westlands Water District

TIM INDART, Indart Land & Livestock, Inc.

HON. BILL JONES, Secretary of State

LUTHER KHACHIGIAN, Cal-Western Farming Company

GREG KIRKPATRICK, American Farmland Trust

DERAN KOLIGIAN, Board of Supervisors

VAUGHN KOLIGIAN, Raisin Bargaining Assn.

LEO KOLLIGIAN, Law Firm of Leo Kolligian

KEN KUNEY, Dooley & Herr

PHIL LARSON, Fresno County Farm Bureau

W. RICHARD LEE, Kimble, MacMichael & Upton

KENDALL L. MANOCK, Baker, Manock & Jensen

DR BERT MASON, California State University, Fresno

TONY MENDES, A.S. Mendes & Son

RICHARD MOSS, Friant Water Users Authority

KEN NEWBY, Deloitte & Touche LLP

DOUGLAS E. NOLL, Lang, Richert & Patch

JASON PELTIER, Central Valley Project Water Association

SALLY A. PERRING, San Joaquin College of Law

Y. STEPHEN PILIBOS, Pilibos Brothers

HON. CHARLES POOCHIGIAN, State Assembly

TONI PORTER, Baker, Peterson & Franklin

ORIE REED, Sanwa Bank

HOWARD A. SAGASER, Sagaser, Hansen, Franson & Jamison

GARY SAWYERS, Law Office of Gary Sawyers

WILLIAM SCARBOROUGH, Sanwa Bank

JOHN SHEHADEY, Shehadey Farms

GEORGE SOARES, Kahn, Soares & Company

SHAWN STEVENSON, Harlan Ranch Company

DR. BILL F. STEWART, State Center Community College District

CRISTEL TUFENKJIAN, Kings River Conservation Dist.

RILEY C. WALTER, Kahn, Soares & Conway

JACK WOOLF, Woolf Farming

# SAN JOAQUIN COLLEGE OF LAW

#### **BOARD OF TRUSTEES**

DR. BILL F. STEWART Chancellor, State Center Community College District CHAIR

HON. JAMES A. ARDAIZ Presiding Justice, California Court of Appeal, Fifth Appellate District VICE CHAIR

ROSS BORBA, JR., Secretary/Treasurer, Borba Farms

RICHARD CAGLIA, President, San Joaquin College of Law Student Bar Association

HON. JANE CARDOZA, Fresno County Municipal Court

JAMES K. HERBERT, L.L.B., President, Hercal

DR. HOWARD LOEWEN, Provost, Fresno Pacific University

JOHN E. LOOMIS, J.D., Retired, Founder of San Joaquin College of Law

WILLIAM M. LYLES, President, Lyles Diversified, Inc.

KENDALL L. MANOCK, Baker, Manock & Jensen

EDWARD MOSLEY, M.D., J.D., San Joaquin College of Law, Class of 1981

DOUGLAS NOLL, J.D., Lang, Richert & Patch

HON. ROBERT OLIVER, Fresno County Municipal Court

ELIZABETH O'NEILL, J.D., Arbitrator, Mediator & Evaluator

SUSIE OSTERBERG, Clovis Business Owner - Retired

JEFF ROWE, J.D., Representative, San Joaquin College of Law Alumni Association

DR. VIVIAN VIDOLI, Dean of Graduate Studies, California State University, Fresno

#### 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 and Advisor for Continuing Legal Education

RICHARD M. CARTIER, B.A., J.D., Professor of Law and Director of Regional Family Law & Mediation Center

DENISE M. KERNER, B.A., M.A., J.D., Professor of Law; Director of Legal Analysis, Research and Writing; and Small Claims Supervisor

JEFFREY G. PURVIS, B.A., J.D., James K. and Carol Sellers Herbert Professor of Constitutional Law

JENNIFER CANALIN, Director of Recruitment/PR

TOM CHACON, Accounting Assistant

KEN COYLE, Network Administrator

MARY FELKNER, MCLE Coordinator

MAUREEN HAYES, Assistant to Chief Financial Officer

LONZETTA HIGHTOWER, Receptionist

JOAN LASSLEY, Law Program Coordinator/Facilities Administrator

ARON LOPEZ, Bookstore Manager

KATHRYN McTigue-Floyd, Library Director

[OYCE MORODOMI, Director of Admissions/Tax Program Coordinator

PAM RAMIREZ, Director of Paralegal Program/Placement Services

JILL WALLER RANDLES, Chief Financial Officer

RICK RODRIGUEZ, Maintenance Custodial Supervisor

AMY SAKKIJHA, Administrative Assistant

PATRICIA SMITH, Financial Aid Officer

GWEN WATT, Director of Financial Aid

# ADJUNCT FACULTY OF LAW

MARC C. AMENT, B.A., J.D., Adjunct Professor of Law HON. JAMES A. ARDAIZ, B.A., J.D., Adjunct Professor of Law JESSE J. AVILA, B.A., J.D., Adjunct Professor of Law BARRY J. BENNETT, B.A., J.D., Adjunct Professor of Law SALVADOR M. BLANCO, B.S., J.D., Adjunct Professor of Law STANLEY BOONE, B.A., J.D., Adjunct Professor of Law HON. A. DENNIS CAETON, B.A., J.D., Adjunct Professor of Law DAVID M. CAMENSON, B.A., M.B.A., J.D., Adjunct Professor of Law JON B. CONKLIN, B.A., J.D., Adjunct Professor of Law JOHN P. ELEAZARIAN, B.A., M.A., J.D., Adjunct Professor of Law CHRISTINE GOODRICH, B.A., J.D., Adjunct Professor of Law SARA HEDGPETH-HARRIS, B.A., J.D., Adjunct Professor of Law W. RUSSELL HOSE, JR., B.A., J.D., Adjunct Professor of Law KATHI KESSELMAN, B.A., J.D., Adjunct Professor of Law MICHAEL P. MALLERY, B.A., J.D., Adjunct Professor of Law HON. VINCENT J. McGRAW, B.A., J.D., Adjunct Professor of Law MARK D. MILLER, B.S., J.D., Adjunct Professor of Law DOUGLAS E. NOLL, B.A., J.D., Adjunct Professor of Law HON. LAWRENCE J. O'NEILL, B.A., M.P.A., J.D., Adjunct Professor of Law DEBORAH D. OWDOM, B.A., J.D., Adjunct Professor of Law ROSENDO PENA, JR., B.A., J.D., Adjunct Professor of Law DUANE RUTH-HEFFELBOWER, B.A., J.D., M.Div., Adjunct Professor of Law RUSSELL K. RYAN, B.S., J.D., Adjunct Professor of Law ROSE SAFARIAN, B.A., J.D., Adjunct Professor of Law VICTOR SALAZAR, B.A., J.D., Adjunct Professor of Law RENE L. SAMPLE, B.S., J.D., Adjunct Professor of Law DAVID J. WEILAND, B.S., J.D., Adjunct Professor of Law JAMES H. WILKINS, B.S., J.D., Adjunct Professor of Law PATRICIA L. WILLIAMS, B.A., J.D., Adjunct Professor of Law E. ROBERT WRIGHT, B.S., J.D., Adjunct Professor of Law

# SAN JOAQUIN AGRICULTURAL LAW REVIEW DONORS

BETHANY R. BAKER\* DENNIS BEAN, CPA BLANKENSHIP & SCHULTZ, CPAs BOLEN, FRANSEN & BOOSTROM, LLP STEVEN J. BOLM JULIA ANN BRUNGESS\* BURFORD FARMS JAMES O. DEMSEY JOHN DEMSHKI - CORONA COLLEGE HEIGHTS A. BEN EWELL, JR. Dan J. Gerawan DONALD O. GERMINO\* M. GREEN AND COMPANY, CPAs\* JOHN C. HARRIS DAVID M. HOGUE \* KYLE W. LATHROP PRICE, PAIGE & STEWART ACCOUNTANCY CORP.\* THOM R. SNYDER WAYNE H. THOMAS, JR.\* WESTLAKE FARMS, INC. LAW OFFICES OF WALTER W. WHELAN

GIFTS RECEIVED AUGUST 2, 1998, THROUGH JULY 16, 1999, FOR VOLUME 9.

\*CONTINUING DONORS

#### ACKNOWLEDGMENTS

The following San Joaquin College of Law students contributed to the production of the San Joaquin Agricultural Law Review, Volume 9:

CYNTHIA ARROYO
DEBORAH K. BOYETT
ERIC ESCAMILLA
CHARLOTTE M. HYLTON
ROD L. KODMAN
NANCY J. LEVAN
DAVID A. MORENO
JUN G. PAYOYO
SUSAN J. PURVIS
DAVID A. SOLDANI
MARA H. VENTURA

BETH BEST
CURTIS DAUGHERTY
CRAIG FRY
KRISTINE KELLY
STÉFANIE J. KRAUSE
SEAN P. MCLEOD
DEBRA ANN MOSLEY
MICHELLE PEPPER
PAUL RODRIGUEZ, JR.
JULIE WITTWER

THE EDITORS GRATEFULLY ACKNOWLEDGE THE SPECIAL ASSISTANCE PROVIDED BY THE FOLLOWING MEMBERS OF THE STAFF OF SAN JOAQUIN COLLEGE OF LAW:

Amy SAKKIJHA
Administrative Assistant

SALLY A. PERRING, J.D. Associate Dean

# SAN JOAQUIN AGRICULTURAL LAW REVIEW



**VOLUME 9** 

1999

NUMBER 1

# TABLE OF CONTENTS

#### ARTICLES

THE LAND CONSERVATION ACT AT THE	
32 YEAR MARK: ENFORCEMENT,	
REPORM, AND INNOVATION	Dale Will 1
An Analysis of State Pesticide	
Drift Laws	Theodore A. Feitshans 37
COMMENTS	
THE EFFECT OF GLICKMAN V. WILEMAN	
Brothers & Elliott, Inc. on	
Nongeneric Commodities: A	
NARROW FOCUS ON A BROAD RULE	Deborah K. Boyett 95
THE SEVEN DEADLY SINS OF MSPA JOINT	
Employer Liability: Strict	
LIABILITY, THE DEPARTMENT OF	
Labor's Hidden Agenda!	Gary D. Brunsvik 117
TELEMEDICINE: THE CURE FOR CENTRAL	
CALIFORNIA'S RURAL HEALTH CARE	
Crisis?	Ann Davis Roberts 141

Copyright © 1999 by San Joaquin College of Law