

SAN JOAQUIN AGRICULTURAL LAW REVIEW



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ARTICLE

THE LONG AND WINDING ROAD: FARMLAND PROTECTION
IN OREGON 1961 – 2009 *Edward Sullivan and Ronald Eber*

COMMENTS

WALKING ON THE WILD SIDE: CLASSIFICATION AND LIABILITY
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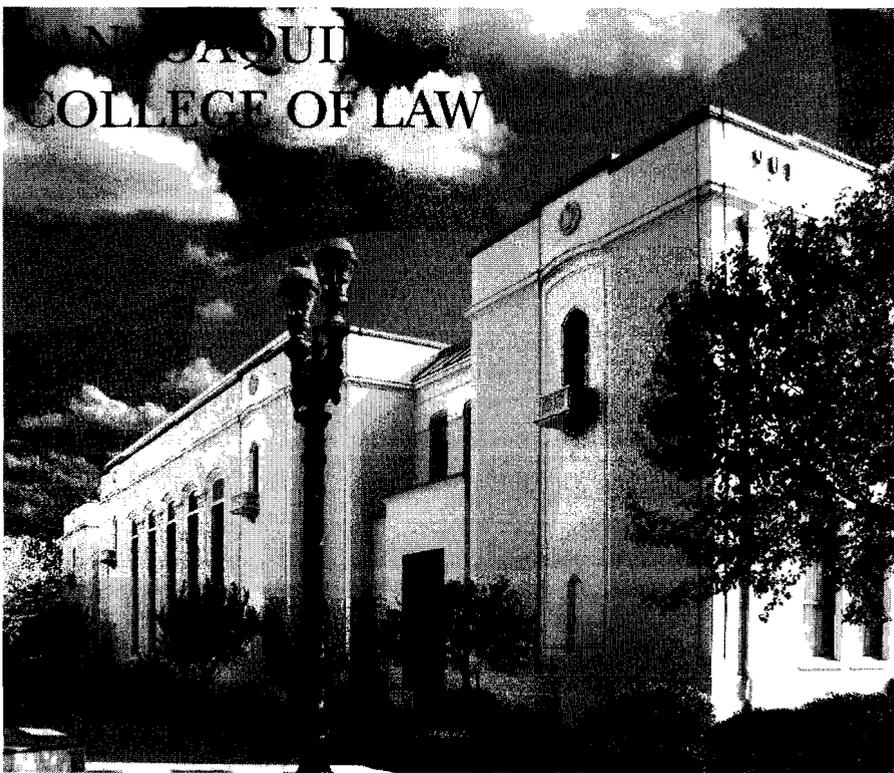
BUYER BEWARE: THE LIABILITY GAP CREATED BY
TRIBAL FARMING *Alicia Diaz West*

DADDY WON'T SELL THE FARM: DRAFTING RIGHT TO FARM
STATUTES TO PROTECT SMALL FAMILY PRODUCERS *Tiffany Dowell*

GROUNDS FOR GREENHOUSE GAS EMISSION TRADING IN AGRICULTURE
AND POTENTIAL CONSTITUTIONAL IMPLICATIONS *Carey L. Hartsock*

ON THE BRINK OF TRAGEDY: REASSESSING GROUNDWATER
MANAGEMENT IN CALIFORNIA *Ann J. Stokes*

SAN JOAQUIN COLLEGE OF LAW



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FOREWORD

KATHILEEN M. PHILLIPS

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 18 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.

Attorney Edward Sullivan, a retired Agricultural Lands policy specialist for the Oregon Department of Land Conservation and Development, and Ronald Eber wrote the Article, *The Long and Winding Road: Farmland Protection in Oregon 1961 – 2009*. The authors trace the history of agricultural lands policy in Oregon from 1961, which includes a property tax policy of use value assessment of farmland to lessen its conversion to nonfarm uses, and land use policies to retain farm land in farm use and support one of the principal mainstays of the economy of the state. The complexity of these efforts parallels the complexity of the tax and land use systems, which over time shifts authority from local government to a shared responsibility with the state, evolves from general discretionary standards to clear and objective ones with increasing concern for procedural fairness. Recurring issues over this fifty-year period are treated in some detail, including: definitions of farm land and farm use, treatment of dwellings and nonfarm uses on farm lands, land division and minimum lot size standards, and the impact of the property rights movement in Measures 7, 37, and 49. The article then concludes with a series of recommendations for the Oregon program.

Ownership of wild-domestic animal hybrid pets and the legal issues involved are discussed in Lisa A. Cutts' Comment, *Walking on the Wild Side*. The Comment provides a contextual background of the growing trend of hybrid pet ownership and the inherent legal issues that arise. A complete analysis of existing laws dealing with ownership, classification, and tort liability highlights the lack of consistency and legal gaps waiting to entrap an unwary owner. Finally, a proposed model law provides guidelines to allow for safe, fair and humane ownership of these unique creatures.

In her Comment, *Buyer Beware: The Liability Gap Created by Tribal Farming*, Alicia Diaz Wrest discusses the long reaching ramifications of federally recognized tribes participating in commerce. This issue is explored through the microcosm of a tribal farming operation exposing the public to a food borne pathogen outbreak. She focuses on the immunity from suit that federally recognized tribes enjoy and exposes how this immunity can be overcome. In conclusion, she offers preventative measures any party dealing with a tribe can take to ensure they will have a remedy if the need ever presents itself.

As the United States population continues to grow, and urban dwellers move to rural areas, nuisance lawsuits will pose a significant threat to agricultural producers. In her Comment, *Daddy Won't Sell the Farm: Drafting Right to Farm Statutes to Protect Small Family Producers*, Tiffany Dowell discusses the importance of right to farm legislation, which seeks to prevent this type of nuisance lawsuit from being successful. In particular, the Comment focuses on provisions of various states right to farm statutes, including generally accepted practices, attorney fee provisions, allowable changes in production, damages available, and disclosure. In conclusion, the Comment analyzes the specific provisions that should be included if right to farm laws truly seek to protect small family producers.

California's response to growing climate change concerns, specifically emission standards in Assembly Bill 32, the California Global Warming Solutions Act of 2006 are discussed in Carey L. Hartsock's Comment, *Grounds for Greenhouse Gas Emission Trading in Agriculture and Potential Constitutional Implications*. This legislation requires statewide greenhouse gas emissions be reduced to 1990 levels by the year 2020; however, AB 32 does not identify a method through which the state will accomplish this goal. While AB 32 does not require a cap-and-trade system, it specifically allows for one; in conjunction with Executive Order S-20-06, which arguably requires a cap-and-trade system, it appears that there is no doubt that a cap-and-trade system is in California's future. This Comment examines the landmark legislation that brought about AB 32 and examines whether or not the cap-and-trade system should be applicable to the agricultural industry. Finally, this Comment analyzes whether AB 32 will be able to survive a Dormant Commerce Clause challenge, concluding that it would.

In her Comment, *On the Brink of Tragedy: Reassessing Groundwater Management in California*, Ann J. Stokes examines the pressing need for change in managing the State's groundwater resources in light of growing environmental, agricultural, and societal concerns. Presently, California water boards lack authority over percolating groundwater, but share concurrent jurisdiction with the courts to resolve claims of right to all other sources of water. In exploring competing interests, her Comment discusses the danger of maintaining the present system without considering the impact of climate change on storage and volume. This Comment discusses the inherent power of the State to manage all water sources in the public's best interest under the public trust doctrine and proposes an integrated surface and groundwater management system to alleviate future availability issues.

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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TABLE OF CONTENTS

ARTICLE

- THE LONG AND WINDING ROAD: FARMLAND
PROTECTION IN OREGON 1961 – 2009. *Edward Sullivan and Ronald Eber* 1

COMMENTS

- WALKING ON THE WILD SIDE: CLASSIFICATION AND
LIABILITY FOR OWNERS OF WILD-DOMESTIC ANIMAL HYBRIDS *Lisa A. Cutts* 71
- BUYER BEWARE: THE LIABILITY GAP CREATED
BY TRIBAL FARMING *Alicia Diaz Wrest* 103
- DADDY WON'T SELL THE FARM: DRAFTING RIGHT
TO FARM STATUTES TO PROTECT SMALL
FAMILY PRODUCERS *Tiffany Dowell* 127
- GROUNDS FOR GREENHOUSE GAS EMISSION TRADING IN
AGRICULTURE AND POTENTIAL
CONSTITUTIONAL IMPLICATIONS *Carey L. Hartssock* 155
- ON THE BRINK OF TRAGEDY:
REASSESSING GROUNDWATER MANAGEMENT IN CALIFORNIA *Ann J. Stokes* 175