

SAN JOAQUIN AGRICULTURAL LAW REVIEW



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NUMBER 1

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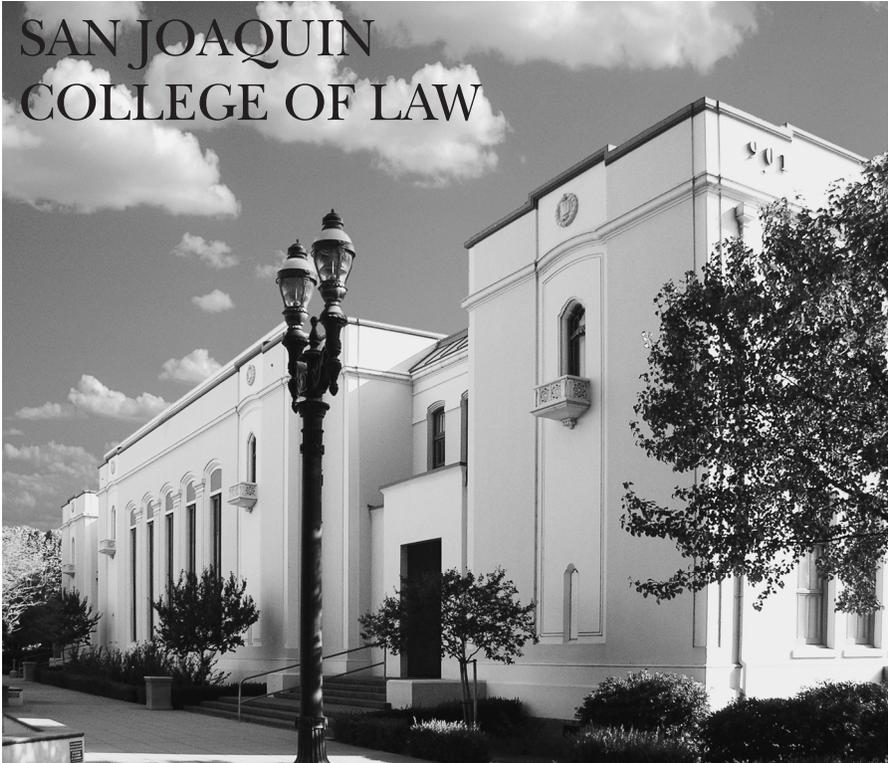
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FOREWORD

LISA R. FLORES

Editor-in-Chief

Continuing its commitment to provide a forum for students and legal professionals to explore various legal issues that impact agriculture, the San Joaquin Agricultural Law Review is proud to present Volume 22. On behalf of the Editorial Board, a heartfelt thank you to everyone who contributed to this volume, including but not limited to our hardworking staff members, professional contributions, and faculty advisors.

Ronald A. Henderson, Esq., examines marketing cooperatives in our lead article, *Scherbart v. Commissioner of Internal Tax Revenue: Does Agency Swallow Cooperative Taxation?* He argues that an Eighth circuit finding that marketing cooperatives are agents of their patrons and all payments to the cooperatives are constructively received by the patrons when paid confuses a common law label of “agent” within agency principles for income taxes and ignores the underlying policy of Subchapter T of the Internal Revenue Code resulting in an erroneous finding by the court.

In *The Impact of Mandatory Recalls on Negligence and Product Liability Litigation Under the Food Safety Modernization Act*, David Benton analyzes whether the Food and Drug Administration’s new mandatory recall authority will make it easier for plaintiffs to succeed in negligence and product liability suits. He explores the likely interpretation of the mandatory recall provision’s language and how courts will probably interpret the law similarly to how they have interpreted provisions of the Food, Drug, and Cosmetic Act. He concludes that the mandatory recall provision will have little to no effect at all on litigation.

Wesley Lawrence Carlson, in *Please Consider the Environment: NEPA Environmental Review and ESA Consultation in San Luis & Delta-Mendota Water Authority v. Salazar*, examines an appellate issue before the Ninth Circuit Court of Appeals in a lawsuit between San Joaquin Valley water users and federal agencies. His Comment examines the U.S. Fish and Wildlife Service’s failure to prepare an Environmental Impact Statement for its issuance of the 2008 biological opinion for the threatened delta smelt. He concludes that the language and spirit of NEPA, as well as Ninth Circuit precedent, requires Fish and Wildlife to conduct environmental review.

Candace M. Clark, in *The Asian Citrus Psyllid and the Regulatory Takings That Organic Farmers in the State of California May Face with its Eradication Program*, addresses the likelihood of a regulatory taking occurring if an organic farmer loses their organic certification because of a regulation that does not allow organic alternatives to eradicate the insect pest. Her comment urges compensation to organic farmers who experience a loss of certification, despite that compensation is generally not given for property damage when the State is eradicating a public nuisance. She recommends that California Courts interpret a citrus nuisance narrowly, and recognize that some current preemptive measures to eradicate the Asian Citrus Psyllid cause damage to organic farmers before any citrus pest is in fact on their property.

In *The Effect of Terminated Federal Marketing Orders on Small Farms, and a Reflection on the Jeffersonian Spirit*, Bradley John Kalebjian explores the government’s long-held “Jeffersonian” policy interest of protecting small farmers, which, during the era of the New Deal, led to creation of federal marketing orders - industry mechanisms that allowed farmers to cooperatively market their products. It addresses how recent economic factors (such as the decline of small family farms in favor of large corporate farms) led to a diminished need for

marketing orders, as well as shortcomings in marketing order administration and the inability of the USDA to adequately address them. It explains how these factors led to the 2011 termination of peach and nectarine orders, and how small farmers suffered - and will continue to suffer - as a result. The comment then reconciles the USDA's competing interests of economic efficiency and small farmer protection to propose remedies that embrace the Jeffersonian spirit of protecting small farmers, while remaining cognizant of larger economic interests.

In *U-Visa Certification Requirement is Blocking Congressional Intent Creating the Need for a Writ of Mandate and Training – Undocumented Immigrant Female Farmworkers Remain Hiding in the Fields of Sexual Violence and Sexual Harassment*, Amanda M. Kjar takes a critical look at the U-Visa, implemented by Congress in the enactment of the Victims of Trafficking and Violence Protection Act in 2000 to protect undocumented immigrants from domestic violence and prevent violence against women. Her Comment shows how the U-Visa's certification process is undermining the congressional intent behind the U-Visa because law enforcement agencies are abusing their discretion and there is a lack of guidance and education at the federal and state level regarding the U-Visa and its certification requirement. She examines that the certification requirement is actually serving as a roadblock to victims deserving immigration benefits and the opportunity to pursue a writ of mandate must be created as a path to overcome the roadblock so victims are not left helpless. She concludes that education is essential in furthering the congressional intent behind the U-Visa and reducing the need for further litigation and the unnecessary use of scarce judicial resources.

In *Agro-terrorism in California: Responding to Legitimate Biological Threats with Effective Legislative Responses*, E. Nicole Kozycki examines the threat of agricultural terrorism in California, specifically addressing the possibility of the intentional dissemination of a contagious disease. The comment analyzes the application of California's existing legislative framework, the Hertzberg-Alarcon California Prevention of Terrorism Act, as it relates to the threat of agro-terrorism and provides a comparison to other state's legislative efforts paired with emerging research suggesting the likelihood of such an attack. The author concludes that California's existing terrorism prevention laws may not effectively address the threat of agro-terrorism to its detriment.

Elizabeth A. Thomasian examines Congress' original intent in forming the Wild Free-Roaming Horses and Burros Act of 1971 and whether that intent is currently being adhered to by the Secretary of the Interior and Bureau of Land Management in *Should the Wild Free-Roaming Horses and Burros Act of 1971 be Reigned in or Turned Out to Pasture?* Despite new scientific findings that would afford wild horses protection from being removed from public rangeland, wild horses are still being categorized as non-native animals and are managed by removing thousands of horses each year. She concludes by determining that regardless of these scientific discoveries, management practices must be changed in order to fully comply with Congress' original intent of protecting the wild horse.

In *Mandatory Labeling Of Genetically Engineered Food: Constitutionally, You Do Not Have A Right To Know*, Sally Noxon Vecchiarelli discusses contested issue of genetically engineered food. Her comment explores the public demand for mandatory labeling of genetically engineered food and the recent push by organizations across the United States to have such labeling enforced in our grocery stores. She concludes that mandatory labeling of genetically engineered foods, without evidence of harmful effects, would be unconstitutional based on the first Amendment.

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