



## San Joaquin College of Law

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## FOREWORD

SALLY NOXON VECCHIARELLI

*Editor-in-Chief*

Agriculture is the heart of California's Central Valley. That which is produced locally is shipped afar, penetrating throughout the world. Here in the Central Valley, the hot topic is always related to agriculture and accordingly, when the students at San Joaquin College of Law decided to start a law review they created the first one written exclusively about agricultural legal issues. How fortunate the student writers are to be able to walk in the nearby fields and speak one-on-one with the farmers and laborers to learn of their struggles and perseverance.

In Volume 24 of the San Joaquin Agricultural Law Review, many of the student writers capture the unique conflicts that face the local farming community. Mao Lee in *Good Intentions Fall Short: Why the Southeast Asian Community is Precluded from Obtaining Farm Loans*, opens the eyes of the reader by sharing the historical background of the Southeast Asian farmers and the on-going hardships they face relocating to America and settling in California. Utilizing their cultural agrarian background, numerous Southeast Asians turned to illegal marijuana cultivation because of the difficulty of attaining the long sought American dream. Ms. Lee explores the farm subsidies available for socially disadvantaged groups and concludes that the requirements for such loans are nearly impossible for Southeast Asians to meet. She proposes that the requirements to obtain farm subsidies be revised so that Americans can assist the Southeast Asians in contributing their unique skillset to California's farming operations and deter the drifters from illegal marijuana cultivation.

While Ms. Lee proposes reform to shift Southeast Asian farmers away from marijuana cultivation, Megan Brown calls out Congress and their laissez-faire stance toward marijuana regulation. In *Puff, Puff, or Pass? Why the United States is Not Ready to Legalize Recreational Marijuana*, Ms. Brown highlights the recent trend toward the legalization of recreational marijuana and the federal government's willingness to allow state social experiments to take place in strict opposition to federal law. Ms. Brown analyzes the conflicts between the Controlled Substances Act and the new regulatory models for legalization, including the social and fiscal impacts. Ms. Brown scrutinizes the duty of the federal government to address and mitigate social harm prior to legalizing recreational marijuana and argues

that the federal government has an affirmative duty to act and implement regulatory and social safeguards before allowing sweeping change to the federal drug policy.

Jeffrey C. Castleton examines a group of Central California irrigation districts, known as the Tributary Agencies, that restrict farmers from participating in inter-district water trades, and argues that their actions may be in violation of federal antitrust laws in *Central California Irrigation Districts: Are They the New Standard Oil?* Mr. Castleton contends that, in light of the drought in California, and the fact that water is an essential element for successful farming, such regulations unlawfully restrain the market through the theory of concerted refusals to deal. Though a strong argument can be made that irrigation districts should be protected under the state action immunity, Mr. Castleton concludes that such control of a vital resource is reminiscent of the well-known robber baron, Standard Oil, and the Sherman Antitrust Act should apply.

Virginia Madrid-Salazar addresses the issues that arise when the water level drops in California in *Feeding the World Has Left Our Water Contaminated: Will California's Human Right to Water Act Fix the Problem?* Ms. Madrid-Salazar provides an overview of contaminated water issues that affect small water providers and private well owners, and the concern that the Human Right to Water Act does not provide a solution or legal remedy for the contaminated water woes of over 22 million users. Ms. Madrid-Salazar explores how the Government Claims Act makes it impossible for the unregulated classes to utilize California's resources for a solution. Ms. Madrid-Salazar further examines how California previously provided solutions for high-energy demands and encourages the State to utilize such solutions to improve water for those that are unregulated, and also to create sustainable water conservation solutions.

A few writers found issues at home that were generally applicable across the United States. In *The Failure that Topples Success: How the Migrant and Seasonal Agricultural Worker Protection Act Doesn't Actually Protect*, Amanda Kendzora addresses the insufficiencies of the Migrant and Seasonal Agricultural Worker Protection Act and how it fails to properly address Fourth Amendment search and seizure concerns. Ms. Kendzora suggests changes to the Migrant and Seasonal Agricultural Worker Protection Act that would ensure that evidence obtained from such administrative searches would be properly admissible and that migrant workers could actually

receive protection through the Migrant and Seasonal Agricultural Worker Protection Act.

Jennifer Oleksa Vanzant peers behind the scene in *A Modern Tale of the Fox Guarding the Hen House: The Inherent Conflict of Interest that Exists When Pesticide Distributors Employ Pest Control Advisers*. Ms. Vanzant uncovers that the vast majority of Pest Control Advisers are employed by pesticide distributors, preventing them from making neutral, unbiased recommendations to growers. Ms. Vanzant discusses the harms resulting from overuse of pesticides, compares the conflict of interest present in the agricultural industry to a similar conflict already proscribed in the medical field, and questions why conflict of interest prohibition is enforced in the governmental sector, but not in the private pest control industry. Ms. Vanzant emphasizes the importance of integrated pest management, and proposes the use of independent Pest Control Advisers who have no affiliation with the pesticide distributors and do not profit from the sale of pesticides to shield the agricultural industry from the inevitable overspray of self-interest.

Moving from the outstretched farmlands to the urban sprawl, Ryan Petty examines the obstacles faced by many urban residents who wish to engage in agriculture by virtue of living in common interest developments subject to the authority of Home Owner Associations or local zoning ordinances. In *You Can't Grow That Here: Obstacles to an Agrarian Renaissance*, Mr. Petty discusses the problems of industrialized agriculture and the benefits of sustainable urban agriculture as a means of securing a more healthy food supply for urban residents who are far removed from places where food is typically grown. Mr. Petty proposes that local governments amend their zoning regulations to facilitate the use of urban land for agricultural purposes and to demonstrate a change in public policy so that courts may have a foundation from which to deny enforcement of restrictive covenants.

In our first lead article, Dean Zimmerli, Judicial Law Clerk for the Honorable Douglas L. Richards at the Fifth Judicial District of Minnesota, probes the market structure of the meatpacking industry in *Something Old, Something New: Relying on the Traditional Agricultural Cooperative to Help Farmers Solve the Power Imbalance in Modern Meatpacker Production Contracts*. Mr. Zimmerli discusses how the meatpacking industry has become increasingly consolidated in recent years and has dramatically outpaced the growth in the size of farms. Along with size growth, meatpacking firms have begun to use vertical integration to increase efficiency and consistency and reduce risk. Several laws have been enacted which address some of the concerns faced by farmers because of the rise of

production contracts and vertical integration in the livestock industry. Mr. Zimmerli concludes that farmers should rely on using the cooperative form to solve the power imbalance typically present in negotiating production contracts. Alternatively, farmers could use cooperatives to set up processing facilities themselves and exclude meatpacking firms entirely. Mr. Zimmerli concludes that utilizing cooperatives is a better approach than directly regulating the content of a production contract that could stymie efficiency and innovation in the industry.

In our second lead article, Lauren Manning, Adjunct Professor at University of Arkansas School of Law, delves into the current trend of consumers' outlook on food and how it has led many poultry companies to shift their practices in order to better satisfy new market demands in *A New Way to Roost: How Land Use Policies Can Facilitate the Changing Tide of Poultry Regulations*. Ms. Manning discusses how the poultry industry has seen a dramatic increase in demand for cage free, local, and organically produced poultry products and that voters have also passed a number of regulations that impose new requirements for egg and poultry operations. As a result, many operations are opening new production facilities and changing their practices in order to conform to the new legal requirements. Ms. Manning's article explores the role that land use planning can play in facilitating the growth of the poultry industry in California, while not impeding upon the small scale or domestic raising of poultry for local or personal consumption.

The comments and articles in Volume 24 analyze agricultural legal issues that are relevant, thought provoking, and meaningful to all walks of life, from those that work on the farm to a corporate executive in a high-rise in Singapore. The issues evaluated in this volume represent only a few of the issues involving agriculture today. The call for continued legal analytical pursuit of these topics reverberates around the world.

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VOLUME 24 IS DEDICATED TO PETER ROONEY

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