



San Joaquin College of Law

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FOREWORD

VIRGINIA MADRID-SALAZAR

Editor-in-Chief

The agricultural industry's greatest areas of concern are scrutinized in the lead article and comments presented in the twenty-fifth volume of the San Joaquin Agricultural Law Review. This law review is the only agricultural law review on the west coast of the United States and is found in the heart of the nation's leading agricultural industry. This volume explores the major issues driving agriculture today – water, marketing and labor. Through thoughtful research, the authors offer thought provoking analysis and recommendations. Readers will find Volume 25 of the law review offers an inquiry into agricultural matters that are still in the early stages of law formation.

A prime example is Mr. Jaskaran Gill's comment that discusses the legal consequences of California's Sustainable Groundwater Management Act ("SGMA") on agriculture in California. In particular, Mr. Gill's comment titled, *California Takes Its First Step Toward Groundwater Sustainability* addresses the manner in which SGMA will impact a farmer's ability to use groundwater to irrigate crops. Mr. Gill provides an overview of the condition of groundwater in California and discusses California's approach towards groundwater regulation. The comment examines the application of California's reasonable and beneficial use doctrine. Mr. Gill further explains why California's current approach towards groundwater management is unsustainable. His comment explains the role of Groundwater Sustainability Agencies, Groundwater Sustainability Plans, and the State in groundwater Management. Mr. Gill explores the concerns surrounding the imposition of fees on groundwater extraction and the power SGMA to restrict a farmer's groundwater use. Mr. Gill's comment ends by providing recommendations for further ensuring sustainable groundwater management in California.

A deep exploration into the potential risks of using oil wastewater to solve drought issues is an undertaking Mr. Ryan Lopez handles very well in *Walking on a Slippery Slope: Desperate Farmers Turn to Oil Wastewater to Irrigate Drought Stricken Crops*. This comment analyzes the potential risks of using oil wastewater (the byproduct of "oil fracking") to irrigate crops and whether the State Water Resources Control Board is doing enough to ensure safety of using such water. He explores the ongoing California drought and the effects on farmers, which has led to the use of oil wastewater. The comment recommends use of the California Water Code to amend and strengthen the current testing regulations in order to protect the well being of the consumers

who will ultimately eat the vegetables that are irrigated with oil wastewater. Mr. Lopez concludes that the current regulations in place are not stringent enough and that the State Water Resources Control Board needs to amend the current testing regulations or seek alternative irrigation sources such as desalination facilities or electric shockwave water treatment techniques.

While Ms. BreAnne Ruelas' comment discusses the illegality of Federal Marketing Orders as a government program that harms consumers by raising the price of popular fruits, vegetables, or nut crops while denying farmers the constitutional and economic freedom to sell perfectly legal produce. Ms. Ruelas explains the history of Federal Market Orders and their function in the agricultural business. Her comment centers around a recent U.S. Supreme Court Case from 2015, *Horne v. Dept. of Agriculture*, 576 U.S. ___ (2015). In that decision the court found a Federal Marketing order in violation of the takings clause of the Fifth Amendment of the United States Constitution. Ms. Ruelas' comment examines the marketing orders of two commodities—cranberries and almonds. Ms. Ruelas' comment recommends a major reform of all marketing orders to ensure they withstand constitutional scrutiny—not just the raisin marketing order. Her analysis concludes that parts of the marketing orders have been proven to be unconstitutional and are causing more harm than good, not only for the farmers, but also the consumers. A drastic change between farmers, handlers, and the USDA is required.

Mr. Kuljit Singh undertakes another examination of water. In *Unilateral Curtailment of Water Rights: Why the State Water Resource Control Board Is Overstepping Its Jurisdiction*, he examines the State Water Resource Control Board's issuance of curtailment letters to junior and senior water right holders along the San Joaquin River and whether the curtailment of senior water rights is a violation of Due Process and whether the State Water Resource Control Board's actions can be considered a taking. Mr. Singh recommends that steps should be taken to conserve our water and senior water rights should be curtailed to ensure availability of water.

Finally, Ms. Allison Ryan addresses the increasing growth of courts using joint employment to enforce the Migrant and Seasonal Agricultural Worker Protection Act, even though the statute itself never mentions joint employment. In the comment titled in *You Are The Employer Even if You're Not: Joint Employment Under The Migrant and Seasonal Agricultural Worker Protection Act*, Ms. Ryan examines the background of the Act, provides the foundation for the joint employment rule through the regulations used to help enforce the Act, before demonstrating the increasing use of joint employment as enforcement. She then recommends that farmers incorporate various agreements with their farm labor contractors and the Department of Labor to

protect themselves from unexpected liability through joint employment under the Act.

The lead article titled, *The Mandatory Mediation and Conciliation Act: A Partisan Remedy Disguised as a Resource for Neutral Dispute Resolution*, is authored by attorney Aaron Castleton, the Director of the Family Court Services in Merced, California. Mr. Castleton takes the position that the Mandatory Mediation and Conciliation Act (“MMCA”) undermines the effectiveness and true purpose of the dispute resolution method of mediation. His article provides a recommendation on how dispute resolution method of mediation should be amended to ensure a more amicable approach. Mr. Castleton begins his exploration by providing a history of mediation, and its modern practices. Specifically, he explains the types of mediation used today and their essential characteristics. Next, Mr. Castleton probes into the history of the MMCA and its effects on agriculture, including the rules and functions of the act. The article examines how many of the MMCA requirements violate the foundations of mediation, specifically the elements of informed consent, voluntariness, collaboration, control by the parties, and self-responsibility and satisfaction. Mr. Castleton recommends to amend the statute by reducing governmental power and returning it to the parties, thus ensuring both sides view mediation as it was intended – an amicable, impartial approach to resolving disputes. The failure to amend the MMCA as recommended, will continue to aggravate the current friction between farmer and laborer, thus prolonging the desired goal of the MMCA, which is to assist laborers in achieving collective bargaining agreements with the agriculture industry.

The task of exploring thought provoking, imaginative, well researched and analyzed issues is accomplished in Volume 25 of the San Joaquin Agricultural Law Review. These professional and student authors represent some of the brightest minds the Central Valley has to offer and are leading the analytical evaluation of issues that will shape the Valley’s agricultural industry. Ultimately, the matters explored here will be discussed in the near future in Valley boardrooms, courtrooms and beyond. We are proud to present Volume 25 of the San Joaquin Agricultural Law Review and are confident it will serve as a resource to the agricultural legal community.

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