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## Introduction

Kylie Cook

Justin Nyberg

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# INTRODUCTION

When one branch of government neglects its duty to protect the sustainable use of natural resources, when should the other branches of government step in? This is the question at the heart of this first issue of the *Natural Resources Journal's* 54th volume. It is central to the theme of Professor Michael Blumm and Maggie Hall's *Lands Council, Karuk Tribe, and the Great Environmental Divide on the Ninth Circuit*, which examines the striking disparity of approaches that the judges of the Ninth Circuit take when reviewing agency action. The article is quite simply a must-read for anyone who has a stake in an environmental case before this important court.

But the question of how closely judges should scrutinize administrative action is not unique to the Ninth Circuit. Professor Chung-Lin Chen gives us a clear-eyed international perspective, demonstrating that as the National Environmental Policy Act's brand of environmental impact assessment (EIA) has spread around the world, so too has the dilemma facing the courts charged with enforcing it: How can the procedural mandates of EIA ensure governmental actions that are *substantively* sustainable? Professor Chen's answer is a call for more rigorous judicial scrutiny when special interests have taken control of the regulatory and political processes. Given the prevalence of agency capture we see in the U.S., the disproportionate involvement of special interests in crafting regulations, and the overrepresentation of corporate interests in the political process after *Citizens United*, Prof. Chen's proposal is as compelling as it is timely.

The proper role of the courts also plays prominently in *An Environmental Conversation*, in which Professor William Tabb uses an in-chambers conversation between justices of a fictional Supreme Court to vividly illustrate the hurdles environmental litigants face as they challenge agency action. The scenario is both realistic and multifaceted, showing that as with the jurisprudence of our real Supreme Court, the law does not speak with one voice.

And when an agency simply fails to act, what then? In *Migrating Towards an Incidental Take Permit Program*, Alexander Obrecht examines the quandary industrial operators face in abiding by the Migratory Bird Treaty Act—a nearly century-old prohibition on the killing of migratory birds that is so archaically vague, it could criminalize owning a cat (technically speaking). Obrecht's call for an incidental take program, one that would allow industrial operators to kill a limited number of migratory birds under closely monitored circumstances, seems the sanest way of bringing clarity to a statute that has caused great uncertainty for industry and a schism among the circuit courts.

Of course, any system for protecting the sustainable use of natural resources relies on a stable government to enforce it. In *Illicit Natural Resource Exploitation by Private Corporate Interests in Africa's Maritime Zones During Armed Conflict*, Professor James Tsabora examines what happens when that enforcement fails due to warfare and chaos. His portrayal of the exploitation and corporate theft of natural resources in Africa during instability culminates with an unavoidable conclusion: other nations must step up to vigorously enforce international law where troubled African states cannot.

Even in countries with stable governments, the balancing of environmental interests can be fraught. Rachel Giron's article *Struggles on the Path to Renewable Energy: Lessons from SunZia* highlights the tortuous road that even the most admirable of "green" projects must follow. It details the tribulations of a renewable-power transmission line in the southwestern United States that finds itself mired in a labyrinth of bureaucratic examination and re-examination. Is it a sign of an approval process that is too protective of local concerns for its own good, or evidence of checks and balances working as they should? Giron's call for a more balanced approval process—one that is more streamlined while still empowering citizen input—could serve as a model for future environmental review of green-energy projects.

We hope you enjoy the work of these scholars as much as we have, and welcome your comments. Send us your thoughts to [nrj@law.unm.edu](mailto:nrj@law.unm.edu) or share them with us on Facebook at [www.facebook.com/NaturalResourcesJournal](http://www.facebook.com/NaturalResourcesJournal).

Kylie Cook & Justin Nyberg  
Editors in Chief