

Golden Gate University Environmental Law Journal

Volume 4

Issue 2 *Pacific Region Edition*

Article 2

January 2011

In This Edition

Kalla Hirschbein

John W. Harrington

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/gguelj>

 Part of the [Environmental Law Commons](#)

Recommended Citation

4 Golden Gate U. Envtl. L.J. 199

This Introduction is brought to you for free and open access by the Academic Journals at GGU Law Digital Commons. It has been accepted for inclusion in Golden Gate University Environmental Law Journal by an authorized administrator of GGU Law Digital Commons. For more information, please contact jfischer@ggu.edu.

IN THIS EDITION

*KALLA HIRSCHBEIN** & *JOHN W. HARRINGTON***

It is an honor to introduce the *Golden Gate University Environmental Law Journal 2011 Pacific Region Edition*. Now in its fifth year of publication, the *Pacific Region Edition* continues to feature works authored by both legal scholars and law students, with a focus on regionally significant environmental issues. But as the field of environmental law continues to expand and reform, so too does the ambition of the *Environmental Law Journal*. Indeed, 2010-2011 marks a year of extraordinary growth for the *Environmental Law Journal*. As *Golden Gate University School of Law* continues to devote more resources and attention to its environmental law program, the *Environmental Law Journal's* talented student membership base has increased dramatically. Meanwhile, the *Environmental Law Journal* has enjoyed a correspondingly significant increase in the number and quality of outside article submissions received from some the field's most respected legal scholars. Consequently, the *2011 Pacific Region Edition* represents a new standard of excellence in scholarship for the *Environmental Law Journal*: a standard that will undoubtedly continue to grow well into the future.

The *2011 Pacific Region Edition* features two outside articles and four student comments. This edition begins with an article written by Alexander G. Crockett, Esq., Assistant Counsel at the Bay Area Air Quality Management District in San Francisco. In *Addressing the Significance of Greenhouse Gas Emissions Under CEQA: California's Search for Regulatory Certainty in an Uncertain World*, Mr. Crockett, explores the efforts that California's air agencies have made to address and determine the significance of a project's greenhouse gas emissions

* J.D. candidate, 2011, Golden Gate University School of Law, Edition Editor, *Pacific Region Edition, Golden Gate University Environmental Law Journal* Vol. 4(2) (2011).

** J.D. candidate, 2011, Golden Gate University School of Law, 2010-2011 Editor-in-Chief, *Golden Gate University Environmental Law Journal*.

200 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 4

under the California Environmental Quality Act (CEQA). He focuses on the recent guidance adopted by three of California's largest regional air-quality agencies, and provides a summary of their emerging areas of consensus on some general principles approaching the issue of CEQA significance. Crockett identifies areas where individual agencies differ in the specifics of how they address significance, concludes with a commentary on what has been gained from these agencies' efforts to develop thresholds of significance for greenhouse gases.

In the edition's second outside article, *Isn't That Special?: The EPA's Special-Case Determination for the Los Angeles River Extends Clean Water Act Protections Cast in Doubt by the Army Corps and the United States Supreme Court*, Douglas Carstens, Michelle Black, and Staley Prom discuss the implications of the U.S. EPA's (EPA) use of its special-case determination authority to bring the Los Angeles River under the protective umbrella of the Clean Water Act. In an effort to examine the implications of the EPA's ability to extend Clean Water Act protection through the use of its special-case determination authority, this article presents a case study of the Los Angeles River and the regulatory interplay between the Army Corps and the EPA. To begin, the authors set the stage by describing the fickle and often volatile physical nature of the Los Angeles River. The article then introduces the legal framework underlying the case by providing an overview of the Clean Water Act, its shared administration by the EPA and Army Corps, and the basis for the EPA's special-case authority. Next, the authors discuss the Army Corps' initial navigability determination of the LA River and the EPA's subsequent application of its special authority to overrule the Army Corps' determination, while highlighting the agencies' differing treatment and characterization of evidence used in making the navigability determination. Finally, the article concludes with a discussion on the potentially far-reaching impacts of the River's navigability determination as it exists within the context of urban Southern California.

In the first student comment of this edition, *A Call for Consistency: Open Seawater Intakes, Desalination, and the California Water Code*, Angela Haren Kelley explores a regulatory gap in the way desalination plants are currently permitted for construction in California. One method of obtaining water for desalination is through open seawater intakes, which kill many forms of marine life. In an effort to protect coastal resources, the California State Water Resources Control Board recently passed a policy to discontinue the use of open seawater intakes in a process known as once-through cooling for use in power plants, but the policy does not cover water withdrawn through the same method for

2011]

IN THIS EDITION

201

desalination. This makes little sense given that the impact to the marine environment is the same regardless of the water's eventual use. With over twenty desalination plants currently proposed around the state, it is a critical time to establish a policy that consistently applies state and federal laws to protect our marine environment while providing freshwater for a thirsty California. This comment argues that the federal and state standards for reducing marine life mortality from power-plant intakes should be applied to a statewide policy for new desalination projects in California. Under this framework, Kelley argues, open seawater intakes should not be permitted for new desalination plants and alternative technology should be required.

In the edition's second student comment, *Future Force Sustainability: Department of Defense and Energy Efficiency in a Changing Climate*, Laura Horton examines recent efforts made by the Department of Defense (DOD) to reduce energy consumption both nationally and internationally. The United States military is the largest single consumer of fuel in the world, and is a major contributor to climate change through the emission of greenhouse gases. Because the DOD itself has recognized the potential devastating effects of climate change as a national security concern, and because fuel convoys in military operations abroad are often enemy targets, the DOD has begun implementing voluntary programs to reduce fuel usage. But are these programs enough? Given that the DOD's compliance with federal environmental and energy laws has been dubious in the past, the voluntary establishment of energy goals and claims of sustainability are met with skepticism. Horton considers the difficulty in ensuring DOD's commitment to sustainability and offers recommendations on how that can be achieved.

In the next student comment, *The Not-So-Green Renewable Energy: Preventing Waste Disposal of Solar Photovoltaic (PV) Panels*, Genevieve Coyle develops a framework to manage waste from solar PV panels. While they provide an obvious benefit to the environment by producing renewable electricity, PV panels contain toxic materials and pose a threat to the environment when they are discarded. Coyle explains how the Resource Conservation and Recovery Act (RCRA) and state hazardous waste laws are ill-equipped to control the waste because they do not cover most PV products, and for the few panels that are regulated, the laws promote disposal over reuse. Coyle advocates a two-part approach to improve PV waste management, ensuring a more sustainable future for the solar industry. First, she recommends that states follow California's lead by amending existing hazardous waste laws to allow recycling of hazardous PV waste. Second, Coyle encourages states to

202 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 4

adopt extended producer responsibility (EPR) laws that mandate recycling of all PV panels and place the onus for end-of-life management on producers of the products. These EPR regimes would stimulate greener PV-product design, reduce the amount of waste generated, and prevent toxic waste from entering landfills.

In the closing student comment, *The Cost of the Bright Red Strawberry: The Dangerous Failure of Pesticide Regulations to Account for Child Farmworkers*, Luthien L. Niland discusses the impacts on child farmworkers of pesticide use in agriculture. An estimated half a million children work in agriculture fields each year and outdated federal labor laws allow children to legally start working in fields at age ten. Yet the refusal of Congress and the U.S. EPA to take child farmworkers into account in a meaningful way when approving and registering pesticides leads to severe health problems for these young children. Additionally, a failure of worker protection laws to provide requirements specifically for child farmworkers masks the problem by creating the appearance of protection as agriculture employers rely on ineffective training and safety standards. Niland outlines the national and international problems with current practices regarding child farmworker exposure to pesticides and suggests a comprehensive response to this problem that is robbing thousands of children of their chance for a healthy and safe life each year.