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## Environmental Law News - November, 2012

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## Message from the Managing Editor

On behalf of the 2012-2013 Editorial Board, it is with great pleasure that I welcome you to the second volume of the Golden Gate University *Environmental Law Journal* newsletter. The Editorial Board looks forward to updating ELJ friends and alumni on the many outstanding accomplishments of our writers and editors.

We have an incredible ELJ staff this year and we are confident that we will produce two outstanding journals thanks to our remarkable and dedicated student writers, outside authors, and associate editors.

Sincerely,  
Rachel Hawkins

Join us for GGU's 2012 Environmental Law Symposium on California's Urban Wildlands: Cities as Habitat **This Friday November 16!**

Please Join Golden Gate University School of Law's Environmental Law Journal and Center for Urban Environmental Law for our annual Environmental Law Symposium, which will be held at Golden Gate University in San Francisco on **Friday, November 16,**

**2012 from 9:00AM to 4:30PM.**

This year's Symposium is *California's Urban Wildlands: Cities as Habitat*. The symposium is being held in conjunction with this month's publication of our symposium edition,

### ELJ 2012-2013 MEMBERS

#### EDITORIAL BOARD

Dawn Withers, Rachel Hawkins, Vadim Sidelnikov, Allyson Umberger, and Garrett Wheeler

#### WRITERS

Marc Fong, Andrew Graf, Adrian Kamada, Scott McAninch, Devarati Mukherjee, Elisa Van Ruiten, Tovah Trimming, Cynthia Tyler, and Celeste Young

#### ASSOCIATE EDITORS

Alexandra Baraff, Rachel Brockl, Marie Carpizo, Ted Chase, Liz Combs, Erin Crum, Robin Duffy, Adam Gulkis, Tiffany Hansen, Stephan Haughey, Ling "David" Kuang, Anna Millich, Cody Nesper, Neha Shah, Cameron Shahbedin, Alec Simpson, Tim Sloane, and Katherine Stockton

*The City as Habitat: A Place for Urban Wildlands.* This edition will feature articles written by some of the panelists attending the Symposium as well as comments written by our Journal's Editor-in-Chief, Dawn Withers; Symposium Edition Editor, Allyson Umberger; and ELJ member and Associate Editor, Cody Nesper. We are thrilled to welcome the following panelists for our two panels on this exciting environmental topic:

Key Note

Joseph Edmiston, Executive Director, Santa Monica Mountains Conservancy

Northern California Panel

Deborah Bardwick, U.S. Interior Department, Solicitor's Office, The Presidio's Crissy Field

Norman La Force, Sierra Club San Francisco Bay Chapter, North Richmond Shoreline

Brendan Moriarty, The Trust for Public Land, Preserving Bay Area Natural Lands

Robert Doyle, East Bay Regional Park District, Recreational-Habitat Conservation Conflicts

Southern California Panel

Robert Garcia, The City Project, Baldwin Hills Park

in Los Angeles

Carlyle Hall, Jr., Akin Gump Strauss Hauer & Feld LLP, Ballona Wetlands in Playa Del Rey

Douglas Carstens, Chatten Brown + Carstens, Los Angeles River Habitat and Instream Flow

John Buse, Center for Biological Diversity, San Diego County's Habitat Conservation Plan

We hope to see you there!

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**Introducing this  
Year's Symposium  
Edition Theme**

***The Ecology of NAFTA:  
Two Decades of Chapter 11  
Investor Claims and Article  
14 Citizen Submissions***

In 1993, the North American Free Trade Agreement (NAFTA) and the North American Agreement on Environmental Cooperation (NAAEC) were signed by Canada, Mexico and the United States. The political debate over NAFTA and the NAAEC was intense in all three nations, particularly in Canada and Mexico, and split the North American environmental community down the middle. The issue factored heavily in the 1992 Presidential election

between Bill Clinton, George Bush Sr. and Ross Perot. Some environmentalists felt that the NAFTA/NAAEC package was a significant improvement over the environmental provisions of the global General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO), while others concluded that these alleged improvements were nothing more than window-dressing for a new continental regime likely to result in further environmental degradation.

Two of the more contentious aspects of this debate related to Article 14 of the NAAEC, which created a new "citizen submission process" (administered by the North American Environmental Commission in Montreal, Quebec) and to Chapter 11 of NAFTA (which allows private companies to force NAFTA nations into binding arbitration for claims that regulation amounted to expropriation of private investments).

It is now 20 years since NAFTA and the NAAEC went into effect; the appropriate occasion to look back over the performance of the NAAEC citizen submission process and NAFTA's Chapter 11 investor protection provision is upon us. The

2013 ELJ symposium edition, titled *The Ecology of NAFTA*, will feature an article on the Chapter 11 Investor Claims from Kathleen Cooper, Senior Researcher for the Canadian Environmental Law Associations, and articles on Article 14 Citizen Submissions, written by authors including Chris Tollefson, Professor at the University of Victoria School of Law, John Knox, Professor at Wake Forest University School of Law, and Gustavo Alanis-Ortega, Executive Director of the Mexican Center for Environmental Law.

### SE Student Writer:

**Cynthia Tyler** is writing about how the United States - Mexico border is an impoverished place that lacks basic infrastructure, such as systems for drinking water, waste management systems, and paved roads. NADBank and BECC work in tandem to lend funding for projects that will develop necessary infrastructure improvements and encourage community participation and creation of project ideas.

Cynthia's Associate Editor is Rachel Brockl.

## Introducing this Year's Pacific Region Edition Writers and Topics

### Student Writers:

**Marc Fong's** comment discusses how the vertical farm is seen as the ultimate urban farm promising numerous economical, ecological and societal benefits. While many cities, such as San Francisco, are promoting urban agriculture within their communities there are still many limitations to establish a vertical farm. This article reviews the scope and limitations of San Francisco's recently passed Urban Agriculture Code in the context of vertical farms. Is the current legislation enough to pave the road to vertical farms? Marc's Associate Editor is Robin Duffy.

**Andrew Graf** is writing about the primary threat facing the northeastern Pacific white shark population, specifically overutilization of the species as the result of bycatch. Current laws and regulations are ineffective at providing the species adequate protection. Marc's comment will examine the problems of white shark bycatch in United States Pacific gillnet fisheries, highlighting the impacts of bycatch, the laws and regulations applicable to those fisheries, and the alternatives that will further conservation efforts. Andrew's Associate Editor is Tiffany Hansen.

**Adrian Kamada's** comment will analyze the potential for an individual displaced by climate change impacts to bring a cause of action against the U.S. in federal court under the Alien Torts Statute. Adrian's Associate Editor is Neha Shah.

**Scott McAninch's** comment will be a comparison of the new greenhouse gas emission standards with regard to the Carlsbad desalination project, which was approved before the 2010 CEQA amendments. The new CEQA amendments require environmental impact reports to have a section about greenhouse gas emissions with mitigation measures for increased emissions. Scott's Associate Editor is Katherine Stockton.

**Devarati Mukherjee** is writing on Senate Bill 226, which allows for a streamlined CEQA compliance process for "urban in-fill" projects. This legislation could have economic benefits for neighborhoods and reduce greenhouse gas emissions. Devarati's Associate Editor is Erin Crum.

**Tovah Trimming** is writing about how increasing US coal exports has spurred concerns about amplified rail traffic, locomotive emissions, and fugitive coal dust. Tovah's article will focus on ways in which coal dust, an unregulated substance, could be regulated under either the

Clean Air Act, the National Environmental Policy Act, or as a safety regulation promulgated by the Federal Railroad Administration. The article will examine the strengths and problematic areas of each regulatory mechanism and recommend which of the three would be the most effective method for addressing the impacts of coal dust. Tovah's Associate Editor is Tim Sloane.

**Celeste Young's** comment discusses the importance of bilge water regulation by the Environmental Protection Agency, preferably modeled on International Covenants. Bilge water is the water that collects in the bottom of a ship and often contains oil and gas residue from the engine room. This water is currently not required to be filtered before it is discharged into the ocean. Celeste's Associate Editor is Marie Carpizo.

### *Outside Authors:*

**Anthony Austin** is writing an article that explores the use of extended producer responsibility (EPR) laws to achieve the ultimate waste management goal: "zero waste." Furthermore, the article discusses a proposed and effective EPR approach

and the potential legal challenges that may arise. Two Associate Editors have been working with Mr. Austin to polish his article, they are: Cody Nesper and Daniel Plotnick.

Mr. Austin is an alumnus of Golden Gate University School of Law. He is currently finishing up his L.L.M. in Environmental and Natural Resources Law and Policy at the University of Denver - Sturm College of Law.

**Dr. Richard Paisley and Dr. Glen Hearn**s are co-authoring an article that identifies and critically reviews the importance of adaptability and flexibility of treaties and institutional arrangements in providing resilience to hydrologic changes in international waters. "David" Ling Kuang and Adam Gulkis are the two Associate Editors hard at work on this article.

Dr. Paisley is the Director of the International Waters Governance Initiative, University of British Columbia. Dr. Hearn is the Technical Advisor for the same organization.

**Aaron Ferguson** is writing an article that discusses the habitat values provided by the Sacramento Valley ricelands and farming

practices, and the relationship between maintenance of these habitat values and voluntary water transfers from the Sacramento Valley to areas south of the Sacramento-San Joaquin River Delta. Two Associate Editors have been working with Mr. Ferguson, they are: Alec Simpson and Cameron Shahabedin

Mr. Ferguson is an associate at Somach Simmons & Dunn.

**Garrett Wheeler** is writing an article that examines the industrial and regulatory status of the U.S. aquaculture industry, and compares the legal frameworks that regulate ocean-based operations with their land-based counterparts. Furthermore, Mr. Wheeler addresses many of the legal implications related to various types of aquaculture practices. The Associate Editors working with Mr. Wheeler are: Elizabeth Combs and Alexandra Baraff.

Mr. Wheeler is the Research Editor for the ELJ and is in his third year at Golden Gate University School of Law. He will be graduating in May 2013.

## *Introducing the 2012-2013 Editorial Board*

### **DAWN WITHERS EDITOR-IN-CHIEF**

Dawn Withers worked as a newspaper journalist for several years prior to attending law school, receiving her B.A. from San Francisco State University in 2005. During her undergraduate studies, she spent a year in Europe studying journalism, economics and politics. Being a part of ELJ has allowed her to indulge her love for editing and writing about urban and housing issues, both interests she developed as a reporter. Dawn spent the past summer working in San Francisco Superior Court researching asbestos and California Environmental Quality Act legal issues. Dawn's comment, *Looking for a Home: How Micro-Housing Can Help California*, will be published in the Golden Gate University Environmental Law Journal this fall.

### **RACHEL HAWKINS MANAGING EDITOR**

Rachel Hawkins hails from a small coastal town called Prunedale, California where she spent every waking moment on her horse and developed a passion for animals and the environment at a young age. Rachel spent her last summer interning at the Pacific Coast Federation of Fisherman's Associations and the Institute for Fisheries

Resources working to promote healthy fisheries and clean water while concurrently working to sustain the livelihoods of local fishermen and women. Rachel's comment, *EPA Shoots Down Lead Shot Regulation: Lead Ammo's Unreasonable Risk to Human Health and the Environment and the Special Situation of the California Condor*, was published in the Spring 2012 PRE Edition.

In her spare time, Rachel enjoys hiking with her dogs, riding her horse on the beach, fishing, camping, and tasting all of the amazing food this City has to offer.

### **VADIM SIDELNIKOV PACIFIC REGION EDITION EDITOR**

Vadim Sidelnikov moved to the United States of America in 1997 after living in Ukraine for eleven years. He has always been drawn to nature and since an early age has been backpacking with his family. After completing his undergraduate education at U.C. Davis, Vadim became determined to practice environmental law. He came to GGU not only because of its environmental law and public interest programs, but also because of its awesome location. In his short two years here, Vadim has worked for GGU's Environmental Law &

Justice Clinic, the Honorable Judge Teri L. Jackson, and the California Attorney General's Office. During his free time, he enjoys hiking, attending Giants games, and generally having a good time.

### **GARRETT WHEELER RESEARCH EDITOR**

In his pre-law school life (which he now recalls with only partial clarity), Garrett Wheeler worked as a writer and journalist, at one time holding an illustrious editorial position at a reputable weekly newspaper in Santa Cruz, California. So successful was he, in fact, that he decided to quit journalism and give law school a try, a decision that brought him into contact with the field of environmental law. Having found his law school field-de-jour, Mr. Wheeler vigorously pursued an assortment of related coursework and internships, further solidifying his environmental intrigue in areas as enthralling as fisheries management, water rights, and public access issues. Aside from reading the works of famed environmental ethicists and like-minded visionaries, Mr. Wheeler enjoys, oddly enough, spending time in the outdoors in the form of surfing, mountain biking, and wandering aimlessly between Bay Area housing developments. Mr. Wheeler is

thrilled to occupy the Research Editor desk for the year and pledges to bring proficiency and zeal to GGU's 2012-13 ELJ.

**ALLYSON UMBERGER  
SYMPOSIUM EDITION  
EDITOR**

Allyson Umberger was born in Florida and moved to Georgia at a young age, where she lived until she moved to California for college. When Hurricane Katrina struck the Gulf Coast in 2006, Allyson became extremely interested in the devastation caused by such natural disasters, especially with respect to how they impacted the energy sector (seeing hundreds lined up at

gas stations for fear of "running out of gas" is no pretty sight). In an effort to understand the business and economics of energy, Allyson moved to California to earn a B.A. in Business Administration at the USC Marshall School of Business. The Deepwater Horizon explosion happened during her senior year, an event which only strengthened her resolve to fix America's energy woes. After graduation, she immediately moved to San Francisco in 2010 to pursue her J.D. with a focus in environmental and energy law. Her path has now led her to the policy side of environmental law, and she has interned with the Department of the Interior's

Office of Environmental Policy and Compliance, with the Environmental Law & Justice Clinic, and with Supervisor Mark Farrell in City Hall. This fall, she will be working with the PUC team at the City Attorney's Office and making sure the PUC stays out of trouble. Allyson has what many would call an "insane addiction" to long distance running, and is running her 3rd full marathon in October here in SF. In her spare time (when she is not running City Hall or just running), Allyson takes an absurd amount of pictures of her year-old kitten and firmly maintains the superiority of USC football.