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## In This Volume

Owen P. Stephens  
*Golden Gate University School of Law*

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## IN THIS VOLUME

OWEN P. STEPHENS\*

It is with pleasure that we introduce *Golden Gate University Environmental Law Journal's* eighth volume, which presents our *Pacific Regional Edition*. This volume features articles authored by legal scholars and environmental practitioners, and comments by current students on environmental issues affecting the Bay Area and the Pacific Region.

This volume features a diverse range of works and comments that focus on environmental issues and their intersections with capitalism, oil, port redevelopment, military preparedness and water markets, across the Bay Area and the Pacific Region.

In the first article, *Environmental Resistance: Defying Capitalism's Structure of False Rebellion*, Professor Laura A. Cisneros explores the dialectic between environmental law and capitalism. Although the modern environmental movement emerged as an antidote to capitalist excess, environmentalism has become trapped within the capitalist paradigm and is itself becoming increasingly market-driven. Cisneros investigates the relationship between environmental protection and capitalism by looking at major ecological sustainability strategies, and the false antimony between capitalism and environmentalism as expressed in current United States Environmental law. She argues that understanding environmentalism's capacity to resist allows us to reimagine its relationship to capitalism, providing space to create a new dialogue that no longer conceives of environmentalism as a systemic loser to capitalism's values.

In the second article, *The M/V Cosco Busan Oil Spill: Turning the Tide—A Model of Successful Collaboration*, Ignacia S. Moreno and Bradley R. O'Brien provide a practical overview of the federal laws that were utilized in the aftermath of the 2007 *Cosco Busan* oil spill. At the time of the settlement, Ms. Moreno was the Assistant Attorney General

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\* 2014-2015 Editor-in-Chief, *Golden Gate University Environmental Law Journal*; B.A., San Francisco State University; J.D., Golden Gate University School of Law.

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of the Environmental and Natural Resources Division of the United States Department of Justice, and Mr. O'Brien was the lead attorney for the natural resource damage claim in the *Cosco Busan* litigation and in the settlement negotiation. As few natural-resource damages claims have been actively litigated, Ms. Moreno and Mr. O'Brien show how the oil spill presented unique challenges as litigation was conducted in parallel to the regulatory process that evaluates natural-resource injuries and damages under the Oil Pollution Act. They explore how the complex relationship between the oil spill Trustees and the vessel interests evolved and resulted in a settlement that required Regal Stone and Fleet Management to fund restoration and recreation projects enumerated in the Trustees' Draft Assessment and Restoration Plan. Further, Ms. Moreno and Mr. O'Brien discuss how the United States, the State of California, local governments, and local citizens joined forces in response to the oil spill; how the responsible parties worked with the federal and state governments; and how their joint efforts and collaboration serve as a model for a restoration framework that "turned back the tide" to restore the precious resources of the San Francisco Bay area.

In the final article, *Creating Middle Harbor Shoreline Park*, Jim McGrath recounts how the Port of Oakland overcame redevelopment obstacles that transformed the former United States Navy Fleet Industrial Supply Center, Oakland ("FISCO") into a new marine terminal and Middle Harbor Shoreline Park. The redevelopment increased shipping capabilities, improved public access to the Oakland waterfront, and restored natural marine habitat. Mr. McGrath offers a unique firsthand account of the planning process, because he oversaw the redevelopment as the Port's Environmental Manager. Mr. McGrath discusses the values employed by the Port to overcome competing interests between local citizen groups and environmentalists, while meeting state and federal legal requirements. The Port invested in proactive community outreach and planned a park that exceeded minimum legal requirements, which led to cooperation between interested parties. By finding common ground early, the project was able to build public support and quickly bypass foreseeable hurdles in the approval process. Mr. McGrath presents a model for future San Francisco Bay projects, concluding that no matter what concerns may divide the public, disputes can often be resolved by finding common ground.

In the first student comment, *An Unfulfilled Promise: How National Security Deference Erodes Environmental Justice*, McCall Baugh examines the tension between environmental justice and military imperatives

within the contexts of administrative and civil rights law. Ms. Baugh vividly illustrates how environmental justice ultimately remains a subsidiary consideration to non-emergency military activities and existing environmental laws. Particularly since September 11, 2001, the judiciary has often subordinated substantive environmental legislation to claimed national-security considerations. Laws impinging on military activity are vulnerable because environmental laws are often not enforced when the military heralds national security needs, even during peacetime. Although there is little evidence that environmental laws actually hinder military training and preparedness, both the courts and Congress embrace non-emergent military activity with exuberance. Ms. Baugh argues for three distinct changes that must be made to current laws to address these shortcomings and make environmental justice a concrete reality. First, Congress must codify Executive Order 12898. Second, that legislation should explicitly require federal agencies to protect communities equally from environmental hazards, create the right to judicial review, and assure military compliance in non-emergency situations. And third, Congress must renew its focus on environmental justice to reduce deference to the military and enforce environmental protections for vulnerable communities. Ms. Baugh asserts that true national security exists only when the military is required to adhere to safe environmental standards that ensure communities are not subject to disproportionate environmental hazards.

In *Taming the West: Senate Bill 4 and California's Struggle To Regulate Fracking*, Justin Hedemark addresses the changing landscape of environmental legislation and regulation as it pertains to the practice of hydraulic fracturing ("fracking") in California. Fracking, the injection of high-pressure fluids into underground geologic formations to extract fossil fuels, has risen to the forefront of the national energy policy debate. In the face of federal stagnation and non-existent reforms, change at the state level is the next best option. In 2013, California adopted Senate Bill 4 ("SB 4"), the nation's most comprehensive fracking regulatory framework. Now, in 2015, many of those regulations are becoming permanent and their enforcement and effectiveness will be tested. After discussing the development of fracking technology, Mr. Hedemark presents regulatory deficiencies at both the federal and state level and examines the potential negative impacts to the environment. Through a careful reading of SB 4's text and a discussion of past and present regulatory practices in the state, Mr. Hedemark illustrates why the implementation of SB 4 is a step in the right direction but leaves room for polluters to harm the environment and places human health at risk. This Comment

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posits that the potential benefits from SB 4 and its resulting fracking regulations will be severely hindered unless adequate funding and proper oversight are implemented by regulatory agencies in the coming years.

In the final student work, *Environmental Tax Incentives: What the United States Can Learn from the Netherlands and Japan*, Kali Waller recommends implementing tax credits and incentives aimed at environmentally friendly behavior to curb climate change and direct consumers and corporations to make more sustainable choices. Ms. Waller analyzes distinct tax regimes in the United States, Netherlands, and Japan, and discusses patterns of taxation that provide avenues for policy reform through environmental taxes. Ms. Waller discusses two main tax categories—energy efficiency and green building. Both categories provide environmental incentives and credits that allow and encourage consumers and corporations to engage in “greener” behavior. Ms. Waller explores the cost, complexity, and culture of each country and further analyzes how environmental taxes are received and implemented in each distinct location. Ms. Waller argues that any future tax incentives promulgated in the United States should be implemented by incorporating several characteristics from Japanese and Dutch models. Specifically, all tax regimes must be cost-effective, simple, and culturally tailored to further environmental policy without stifling the economy.

As we present this Volume of the *Golden Gate University Environmental Law Journal*, we sincerely hope you will find this section informative and engaging. We extend our thanks to our faculty advisors, Professor Paul Kibel and Professor Jennifer Pesetsky, for their support and guidance, and a special thank you to Professor Edward Baskaukas for his tireless commitment to bringing out the best in our work. Additionally, this publication could not have succeeded without the hard work of our student editors and devoted authors. Finally, we would like to thank the faculty and staff of Golden Gate University School of Law, particularly Dean Rachel Van Cleave, for their dedication to and support of environmental law scholarship here at GGU Law.