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WATER!

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Features

Investment in Water and Wastewater Infrastructure: An Environmental Justice Challenge, a Governance Solution

Alexandra Dapolito Dunn and Erin Derrington

This article discusses environmental justice issues associated with drinking water supply and examines public versus private ownership of water infrastructure. Authors Dunn and Derrington employ examples of the impacts of water contamination and the growing presence of privatized water and wastewater infrastructure projects in some of the world's most populous countries—China, India, the United States, Brazil, and Nigeria. The authors articulate the importance of the rule of law and sound environmental governance in this arena and emphasize the role of the legal community in addressing these challenges. Dunn and Derrington propose solutions for bringing justice factors meaningfully into the planning, construction, and operation of water and wastewater infrastructure projects.

Corporate Accountability and Human Rights in the Age of Global Water Scarcity

Edgar Chen and Sarah A. Altschuller

In a time of rapid population growth and climate change, and with millions around the globe lacking adequate water and sanitation, access to clean, affordable water has become a pressing human rights issue with ethical and legal implications not only for sovereign states, but for private actors who serve as both purveyors and consumers of water. This article explores the responsibilities of businesses that consume, provide, and profit from water. The authors examine both existing international legal instruments and current human rights norms, such as the framework enunciated by the UN Special Representative to the Secretary-General on Business and Human Rights, which posits that business has a responsibility to respect human rights, independent of states' obligations to uphold and protect those rights. The article concludes that the first step to meeting this responsibility is for businesses to provide transparent and accurate reporting on water usage and impacts on affected populations.

The Dawn of Federal Marine Renewable Energy Development

Peter J. Schaumberg and Ami M. Grace-Tardy

Our nation's rapidly accelerating desire to embrace renewable energy and the federal government's substantial support for this industry present unprecedented opportunities for marine renewable energy development on the U.S. Outer Continental Shelf. Nascent marine technologies that harness the power of offshore wind, waves, and currents will contribute to U.S. energy supplies now that the Minerals Management Service offshore renewable energy regulations are effective and its jurisdictional dispute with the Federal Energy Regulatory Commission is resolved. Despite this significant progress, marine renewable energy developers still must overcome numerous environmental and other regulatory hurdles before constructing commercial-scale projects that will help secure our nation's energy future.

Floods, Famines, or Feasts: Too Much, Too Little, or Just Right

Sandra Zellmer

This literary journey begins with a bit of the history of the boom and bust cycles of droughts and floods that have played out during the course of Americans' love-hate affair with water. The Great Plains serves as the focus for this exploration, but the author also turns to the Florida Everglades and the Grand Canyon of the Colorado River, where restoration projects are underway. Along the way, the author examines the "usual suspects"—the typical technological and legal responses to drought and floods. Finally, she investigates ecosystem restoration as a strategy for a more sustainable relationship with water in all of its facets, through thick and thin, flood, famine, and feast.

Increased Urban Water Supply Reliability through Voluntary Transfers of Reclamation Water

Laura C. Makar

Future urban water supply reliability will be complicated by global climate change and expected population increases in urban areas throughout the western United States. Reallocation of water supplies will be necessary, but impacts on third parties should condition options available to those engaging in pragmatic risk management. Marketing of Federal Bureau of Reclamation water should be facilitated to increase resiliency and flexibility in municipal and industrial water supplies before increased urban population growth and global climate change converge.

Muddy Waters: Recent Developments under the Clean Water Act

Keith A. Johnston and Kristine Sendek-Smith

The Clean Water Act today is a statute in flux. Questions about the Act's jurisdictional reach, an administration more active on water issues, continued conflicts over the interpretation of the statute and regulations, and a potentially vast expansion of pollutants regulated under the Act have raised significant questions for water practitioners. This article examines the who, what, when, where, and why of the most recent developments under the Act. Who holds the regulatory power over tailings disposal from mines? What waters are regulated? When is there a "discharge of a pollutant"? Where will discharges of "emerging contaminants" be regulated? Authors Johnston and Sendek-Smith address these questions and also offer an opinion about why these issues are in the forefront now.

Is Groundwater Different?

James Stuhltrager

This article describes EPA's new policy on groundwater restoration, which follows a series of disputes between the Army and EPA over the trigger for action under CERCLA. The author explains how the new policy has the potential to alter both private and federal responses to groundwater contamination.

Departments

Vantage Point

Interview: Anne Castle

Insights:

Are "Green" Homes Really Safer Homes?

Bruce D. Ray

Because green, energy-efficient homes are tighter, they are more prone to potential indoor air-pollution problems. In new homes, indoor air pollution is best addressed by pollution prevention through careful selection of building materials that are made without added VOCs of concern—especially formaldehyde—and materials that do not off-gas those pollutants to the indoor living space. Current programs that certify product emissions as "low" or appropriate for "children and schools" are not appropriate for residential environments because those programs

fail to address the unique characteristics of new homes, especially the typically lower ventilation rate and the presence of persons who are more sensitive to indoor air pollution.

Draft Reports and Attorney-Expert Communications

John M. Barkett

The Civil Rules Advisory Committee has amended Rule 26 of the Federal Rules of Civil Procedure. The changes, expected to take effect December 1, 2010, exclude from discovery draft expert reports and attorney-expert communications, except those relating to compensation, or facts or assumptions provided to the expert by the lawyer. Parties will also have to provide a summary of the expected subject matter of testimony from nonretained experts.

NEPA: Not a Federal Private Nuisance Statute

Maria Gillen

The National Environmental Policy Act (NEPA) was created to guarantee that federal agencies undertaking major actions take a "hard look" at the possible environmental impacts of those actions. The Act does not require substantive results, however, only process. Court cases that have found no private right of action implied in NEPA have dismissed suits by private plaintiffs seeking to enforce environmental commitments contained in NEPA review documents. Those decisions are correct even though they may frustrate plaintiffs negatively impacted by federal actions with significant impacts on the environment.

EU Regulation of Aviation CO₂ Emissions

Isabelle Laborde

From 2010, the European Union's Emissions Trading Scheme will apply to the aviation sector. Aircraft operators included in the scheme will be required to monitor and report on their greenhouse gas emissions to their administering Member States. Emission allowances will be allocated to operators who will also be able to purchase additional allowances on the market so as to surrender, at the end of the year, a number of allowances corresponding to their annual emissions of greenhouse gas. Potentially onerous enforcement mechanisms are in place to safeguard against noncompliance.

Conservation Easements in an Ecosystem Services Age

Laurie Ristino

This Insights article discusses the rapid emergence of ecosystem services markets in the United States and the implications of these markets to environmental protection and the development of the law.

Tribal Self-Determination in a Low-Carbon Economy

Dean B. Suagee

Indigenous peoples, including Indian tribes, will suffer from the impacts of climate change in ways that stress their cultural traditions and threaten their survival as distinct peoples. In light of the range of impacts, and the ways in which Indian tribes contribute to the national carbon footprint of the United States, Suagee argues that tribal governments must be sovereign partners in national and regional programs to reduce greenhouse gas emissions through energy efficiency and renewable energy. Focusing on buildings and the movement toward a zero-net-energy standard, Suagee advocates inclusion of tribal governments in federal assistance programs for improving energy efficiency in new buildings through the enactment and enforcement of building codes and for retrofitting existing buildings.

Literary Resources

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