FOREWORD

In our lead article, Professor Alice Kaswan examines the role that environmental laws play in equal protection claims challenging the siting of undesirable land uses in minority neighborhoods. Her article demonstrates that, despite intimations to the contrary in environmental justice literature, environmental laws can make a positive contribution to the pursuit of racial justice. Professor Kaswan begins by analyzing and clarifying the factual prerequisites to bringing an equal protection claim against the siting of an undesirable land use. That analysis illustrates that the evidentiary burdens are formidable but not necessarily insurmountable. The analysis also illustrates that outcomes will turn largely on case-specific facts—facts about a siting decision's disparate impact, historical context, internal process, and compliance with relevant substantive and procedural criteria. Professor Kaswan then shows how environmental laws may generate relevant facts by requiring decision makers to obtain and disseminate significant amounts of information about the siting process and by imposing numerous benchmarks for evaluating the decision-making process. This application of environmental laws to siting decisions may generate just the factual "grist" necessary for the demanding equal protection mill. More generally, the article's exploration of the positive interrelationship between environmental laws and constitutional claims helps bridge the historic gap between the environmental and civil rights movements.

In our second article, Professor James Rasband discusses the Clinton Administration's recent use of the Antiquities Act to designate the Grand Staircase-Escalante National Monument in southern Utah. Professor Rasband argues that, although the Grand Staircase will surely become one of the jewels of the national park and national monument systems, the process by which the monument was designated robbed the endeavor of some of its nobility. Professor Rasband maintains that the basic virtues that wilderness literature teaches should govern our interaction with wilderness—virtues like sportsmanship, restraint, deliberation, sensitivity to impact, and patient woodcraft—are the same virtues that should govern the acquisition of wilderness. The irony of the Grand Staircase designation,

Professor Rasband contends, is that we value the monument for its ability to develop within us the very virtues that the Administration ignored in securing the monument. Professor Rasband asserts that, to ensure that future designations reflect these values, the Antiquities Act should be amended to provide for public involvement and consideration of local community impacts. He concludes that regardless of whether the law is changed, voluntary adherence to wilderness virtues in the withdrawal process should be part of a preservation advocacy ethic.

In our third article, Joyce Colson examines the Mineral Management Service's ("MMS") new gas transportation allowance regulations and proposed oil regulations, which collectively create a new pricing methodology for the federal government to assess royalties on federal mineral leases. Ms. Colson contends that these guidelines impose a new duty on lessees to develop and create markets for their products—a duty that is not supported by the applicable statutes, case law, or contract specifications contained in preexisting leases between the parties. The MMS contends that the new gas valuation regulations merely clarify the distinction between deductible transportation costs and nondeductible marketing costs, and that the proposed oil regulations merely impute the resale price of affiliates to federal lessees. Ms. Colson maintains, however, that the MMS, by unilaterally imposing new obligations on federal lessees, improperly seeks to share in midstream and downstream profits without also sharing in any of the risks or costs associated with oil and gas production.

In our first comment, the author examines federal relicensing procedures for hydropower projects and argues that the current statutory framework endangers the future development of this clean, efficient, and historically inexpensive alternative to fossil fuels. First, the author describes the history of hydropower development in this country through congressional and judicial responses to the Federal Energy Regulatory Commission's ("Commission") administration of the Federal Water Power Act of 1920. He notes that the public's understanding of how dam projects interact with the environment has broadened since the original hydropower statutes were enacted during the "dam-building years" of 1930 to 1970. Consequently, because these dams are now facing required relicensing, applicants must comply with new regulations regarding environmental impact and other

public interests. The author contends that although the Commission is obligated to balance hydropower projects according to these interests, mandatory conditioning authority held by resource agencies conflicts with the Commission's authority to balance these projects in the public interest. This conflict has created a time-consuming and expensive dam-relicensing process that arguably jeopardizes the continued viability of hydropower as an energy source. The author proposes that although the appropriate remedy is congressional action, there are two processes currently available that can help alleviate these problems: fast-track licensing regulations and alternative dispute resolution. The author concludes that, until Congress amends the Federal Power Act, alternative dispute resolution offers the best solution because it has been shown to save time and money in hydropower project relicensing.

In our second comment, the author examines a recent controversy between the United States Forest Service and various western water interests. The controversy stems from the Forest Service's claimed authority to require the owners of several municipal water facilities that operate within the national forests to maintain minimum flow levels in the streams impacted by their facilities, even if they could otherwise dry up the streams under state law. Few environmental conflicts currently debated in the courts and legislatures raise such hotly contested issues of federalism and the delegation of congressional power to regulate the public lands. The debate is of such importance that Congress appointed a seven-member task force to determine the extent of the Forest Service's power under the Federal Land Policy and Management Act and other environmental laws to regulate streamflow levels in this way. However, the task force failed to reach a consensus, deciding by a margin of four to three that the Forest Service lacks bypass flow authority. The author carefully weighs the competing arguments of the task force, concluding that the Forest Service may impose minimum streamflow requirements in its right-of-way permits, but only after attempting in good faith to negotiate voluntary protective measures.

THE EDITORS