FOREWORD

In our first article, Dr. Lawrence J. MacDonnell examines the challenge faced by the Bureau of Reclamation in restoring and maintaining the ecological integrity in the rivers its facilities have transformed. Drawing on his two-and-a-half-year study of Reclamation projects in the western United States, Dr. MacDonnell begins by exploring the nature of project development in the Truckee and Carson Rivers of California and Nevada, the Yakima River in Washington, and the Upper Colorado River in Colorado, paying particular attention to the in-place function of the river water. Next, Dr. MacDonnell describes generally five approaches used to provide ecosystem benefits to these and other rivers throughout the West and then explores the particular applications of those approaches to the three rivers under consideration. He next considers various critical issues raised by the kinds of changes that may be required in the management and use of western water resources in order to provide adequately for the ecosystem functions of those resources. Dr. MacDonnell concludes that the Bureau of Reclamation is well suited to restore and maintain the ecological integrity of the western rivers its facilities regulate and could therefore assume a position of leadership in taking steps necessary to assure the long-term sustainability of western waters.

In our second article, Professor Janet C. Neuman details her case study of a mediation among parties involved in a complex water-rights dispute. Specifically, she examines the use of mediation in a recent dispute over the rights to water in Oregon's Umatilla River. Professor Neuman analyzes the mediation from both an "inside" and an "outside" perspective, attempting to discover both whether the parties involved were subjectively pleased with the mediation and whether the mediation produced objectively positive results. Utilizing extensive surveys and interviews with the parties involved, Professor Neuman evaluates the successes and failures of the Umatilla mediation. More importantly, however, Professor Neuman extrapolates from the results of the case study and proposes broader lessons to be learned regarding the usefulness of mediation in future complex water-rights and natural-resource disputes.

In our third piece, Elizabeth Ann Rieke discusses the negotiated settlement of the protracted dispute over water rights,

water-quality standards, and endangered species protection in California's Bay-Delta region. Ms. Rieke draws extensively on her experience as Assistant Secretary for Water and Science in the Department of the Interior, where she was responsible for negotiating the landmark agreement on behalf of the federal government. Ms. Rieke first outlines the history of the conflict and its resolution. Next, she explores factors she considers critical to the success of the agreement, highlighting the role played by a federal strategy designed to encourage a state-generated solution. Ms. Rieke concludes that without a strong federal mandate and a strong federal role the agreement protecting imperiled species and providing water users long-term stability would not have been possible.

In our first Comment, the author examines the recently introduced "No Surprises" approach to habitat conservation planning under the Endangered Species Act. The author first provides an overview of the ESA and discusses its impacts on both species and private property owners. The author next argues that habitat conservation planning, as introduced into the ESA in 1982, failed to overcome the ESA's shortcomings for a variety of reasons. The author then compares the "No Surprises" Habitat Conservation Plans with the plans of the past and explores some of the difficulties associated with achieving the goals of the "No Surprises" policy—the provision of certainty to landowners and increased protection for species. Next, the author outlines the issues that must be addressed before "No Surprises" Habitat Conservation Plans can become a viable alternative to the ESA's approach to species protection. The author concludes that although the "No Surprises" policy fails to provide certainty to property owners, it may nonetheless spur interest in habitat conservation planning as it offers the best framework yet developed to balance and protect the needs of both species and landowners.

In our second Comment, the author explores the possibility of improving conditions for livestock on factory farms through greater regulation of the use of antibiotic-laced animal feed. The author first points out the absence of legislation ensuring the humane treatment of farm animals during cultivation and finds that, as a result, animal husbandry is governed principally by economic concerns, with little or no incentive to take into account the animals' interests. In order to remain competitive, farmers are often driven to confine farm animals without regard for their

comfort or well-being. The author next observes that the feasibility of these modern confinement methods is largely due to the widespread use of low-dose antibiotics to promote growth and prevent disease in environments that are otherwise ill suited to raising animals. The author then points to recent evidence that the administration of these antibiotics could pose serious health risks to humans and argues that although a farm animal welfare statute is politically infeasible, a ban on the use of subtherapeutic doses of antibiotics in livestock feed is more attainable in light of the practice's potential human health hazards. The author concludes that such a ban would improve conditions for farm animals by forcing farmers to revert to more traditional and humane methods of farming.

In our final Comment, the author discusses recent developments regarding state environmental audit privilege statutes. The author first evaluates Colorado's recently enacted environmental audit privilege statute in light of Environmental Protection Agency and Department of Justice policies concerning the use of environmental audits in enforcement proceedings. The author next examines the possibility of federal preemption of state environmental audit privilege statutes, as well as the possibility that such statutes could cause states to lose their authority delegated by EPA to implement environmental laws. Finally, the author concludes that Colorado's environmental audit privilege statute fails to strike an appropriate balance between the goals of enforcement of, and compliance with, federal and state environmental laws.

THE EDITORS