ABSTRACTS

Holly Doremus, *Takings and Transitions,* 19 J. LAND USE & ENVTL. L. 1 (2003).

This article explores the inconsistent doctrines advanced by the courts in determining regulatory takings cases. Given the current nature of this area of the law, the author proposes an alternative test to apply in takings cases to provide more straight-forward treatment. That test would encompass four factors: 1) the justification for regulatory change; 2) the extent to which change was foreseeable in advance, and the ability of the landowner to adapt to that change; 3) the abruptness of the change; and 4) the generality of its application. Since regulatory takings claims are entirely about change, the author argues that the courts should begin their analysis of such claims with the knowledge that a particular type of change is essential to a viable claim. The author acknowledges that there are tensions in society's view of change, but suggests that fair distribution of the costs of regulatory transitions would introduce greater discipline into what presently seems to be unprincipled decision-making.

J. B. Ruhl, *Equitable Apportionment of Ecosystem Services: New Water Law for a New Water Act*, 19 J. LAND USE & ENVTL. L. 47 (2003).

This article is an edited and annotated version of remarks delivered by the author at the FSU College of Law's forum on *The Future of the Appalachicola-Chattahoochee-Flint River System: Legal, Policy, and Scientific Issues*, held on November 5, 2003. The purpose of the article is to suggest that the greater understanding we have today of the role ecological processes play in delivering tremendous economic value to human populations demands that the law recognize these important ecosystem services as a critical factor in the interstate water apportionment calculus. The author makes this point in the context of the dispute over the Appalachicola-Chattahoochee-Flint River System ("ACF").

The author explains that the "water wars" (disputes over interstate water allocation) have moved East. Will the East simply import interstate allocation law as it has been shaped in the West, or will it forge a new water law for a new water age? The author suggests the latter, proposing that the East mold water law to meet the ecological realities of its great river systems. The author concludes that for Florida to prevail in the ACF dispute, it must urge the Court to consider the full

import of *Idaho v. Oregon* to make its equitable apportionment jurisprudence align with the real reason we care about water — its ecosystem service values.

Jesse J. Richardson, Jr., *Downzoning, Fairness and Farmland Protection*, 19 J. LAND USE & ENVTL. L. 59 (2003).

The author addresses the role of "downzoning" in smart growth efforts. Initially, the article summarizes the six major potential legal challenges against downzoning to protect farmland and how each of these legal causes of action attempts to address "fairness." The causes of action include: direct challenges of the act, spot zoning, takings, substantive due process, equal protection, and 42 U.S.C. 1983. Then, the article describes and refutes the major arguments posited by those supporting the fairness of downzoning without compensation to landowners. The author concludes that the awkward intervention of the court into these matters results from inherent unfairness of downzoning without compensation along with the lack of an ideal legal cause of action to address fairness issues.

Jeffrey H. Wood, *Recalibrating the Federal Government's Authority to Regulate Intrastate Endangered Species After SWANCC*, 19 J. LAND USE & ENVTL. L. 91 (2003).

The federal government has spent the last thirty years regulating activities that affect endangered species regardless of the species' impact on interstate commerce. The federal government used the Commerce Clause to justify such a wide range of activities there seemed to be no limit to the federal government power to intervene on behalf of endangered species. This scheme changed radically with the Supreme Court's decision in Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers. The holding implied that federal regulation of isolated, intrastate ponds unconstitutional.

This article outlines the framework that produced the SWANCC decision. The structure is based on the Endangered Species Act and its earlier judicial treatment. Once the foundation is laid, the article begins to consider the effects of the SWANCC decision and its treatment of the Commerce Clause. These discussions provide the basis for the proposal of an intrastate species test by the author. The test narrowly defines intrastate species and bans federal regulation based on such species.

Kevin E. Regan, *Balancing Public Water Supply and Adverse Environmental Impacts Under Florida Water Law: From Water Wars Towards Adaptive Management*, 19 J. Land Use & Envtl. L. 123 (2003).

This note addresses the need to incorporate adaptive management principals into Florida's water management system. It begins with an overview of the Eastern, Western and Administrative approaches to water law. The piece continues with an in depth review of the Tampa Bay "waters wars" to examine the increasing conflict of water use in the state of Florida. The author reviews the administrative dispute concerning water use permits for four well fields located in the Tampa Bay area, and by doing so, attempts to show the need for flexibility in permit renewal that reflects reliance on scientific, economic and equitable measures to balance the needs of humans and natural resources that are reasonable, beneficial, and consistent with public use.