University of Michigan Law School
Ann Arbor, Michigan
Except where otherwise expressly provided, the author of each piece of scholarship in this issue has granted permission for copies of that scholarship to be made in whole or in part by nonprofit institutions for educational use, including distribution to students, provided that (i) copies are distributed at or below cost; (ii) copies identify the author, the Journal, the volume, the number of the first page, and the year of publication; (iii) proper notice of copyright is affixed to each copy, attributing copyright to the author.


Michigan Journal of Environmental & Administrative Law
University of Michigan Law Library
801 Monroe Street
Ann Arbor, MI 48109-1210
MJEAL.Business@umich.edu
http://www.mjeal-online.org

Publication Policy
The Michigan Journal of Environmental & Administrative Law will publish articles and student notes on all aspects of environmental law and policy, as well as administrative law topics that may apply to environmental law. The Journal will generally focus on the American legal system. However, it welcomes interdisciplinary and international scholarship that advances understanding of environmental and administrative law and policy. The Journal may publish any article that its editors believe will be consistent with these aims.

Subscriptions
The current subscription rate is $35.00 domestic and $45.00 foreign. All subscription inquiries should be made to mjeal.business@umich.edu. Subscribers should report the non-receipt of copies within six months of the mailing date. For more information, please see the Subscriptions page at the end of the Journal.

ISSN 2375-6276 (Print)
ISSN 2375-6284 (Online)
UNIVERSITY OF MICHIGAN LAW SCHOOL

Administrative Officers
Mark Schlissel, B.A., M.D., Ph.D., President of the University
Martin A. Philbert, B.Sc., Ph.D., Provost and Executive Vice President for Academic Affairs
Mark D. West, B.A., J.D., Nippon Life Professor of Law, Dean
Bridgette Carr, B.A., J.D., Clinical Professor of Law, Associate Dean for Strategic Initiatives
Daniel Halberstam, B.A., J.D., Eric Stein Collegiate Professor of Law, Associate Dean for Faculty and Research, Director of European Legal Studies Program
Debra Chopp, B.A., J.D., Clinical Professor of Law, Associate Dean for Experiential Education
David Santacroce, B.A., J.D., LL.M., Clinical Professor of Law, Associate Dean for Experiential Education
Gil Seinfeld, A.B., J.D., Professor of Law, Associate Dean for Academic Programming
Michael Dubin, B.S., M.A., Assistant Dean for Development and Alumni Relations
Theresa Kaiser-Jarvis, B.A., B.S.J., Ed.M, J.D., Assistant Dean for International Affairs
Ramji Kaul, B.A., J.D., Assistant Dean for Career Planning
Bayrex Marti, B.A., J.D., Assistant Dean for Student Life
Lindsey Stetson, B.A., J.D., Assistant Dean for Financial Aid
Sarah C. Zearfoss, B.A., J.D., Senior Assistant Dean for Admissions, Financial Aid, and Career Planning

Professors Emeriti of Law
Layman E. Allen, A.B., M.P.A., LL.B.
David L. Chambers, A.B., LL.B., Wade H. McCree, Jr. Collegiate Professor of Law
Edward H. Cooper, A.B., LL.B., Thomas M. Cooley Professor of Law
Donald N. Duquette, B.A., J.D., Clinical Professor of Law
Philip M. Frost, B.A., J.D., Clinical Professor of Law
Thomas A. Green, B.A., Ph.D., J.D., John Philip Dawson Collegiate Professor of Law
Jerold H. Israel, B.B.A., LL.B., Ame and Allan F. Smith Professor of Law
Douglas A. Kahn, B.A., J.D., Paul G. Kauper Professor of Law
Yale Kamisar, A.B., LL.B., LL.D., Clarence Darrow Distinguished University Professor of Law
Thomas E. Kauper, A.B., J.D., Henry M. Butzel Professor of Law
Richard O. Lempert, A.B., J.D., Ph.D., Eric Stein Distinguished University Professor of Law and Sociology
Sallyanne Payton, B.A., LL.B., William W. Cook Professor of Law
Margaret Jane Radin, A.B., M.F.A., J.D., LL.D., Henry King Ransom Professor of Law
Terrance Sandalow, A.B., J.D., Edson R. Sunderland Professor of Law
E. Philip Soper, B.A., M.A., J.D., Ph.D., James V. Campbell Professor of Law
Theodore J. St. Antoine, A.B., J.D., Theodore J. St. Antoine, A.B., J.D.
James E. and Sarah A. Degan Professor of Law
Joseph Vining, B.A., M.A., J.D., Harry Burns Hutchins Collegiate Professor of Law
Lawrence W. Waggoner, B.B.A., J.D., D.Phil., Lewis M. Simes Professor of Law
Peter K. Westen, B.A., J.D., Frank G. Millard Professor of Law
James Boyd White, A.B., A.M., LL.B., L. Hart Wright Collegiate Professor of Law
James J. White, B.A., J.D., Robert A. Sullivan Professor of Law

Professors of Law
Kate Andrias, B.A., J.D.
Reuven S. Avi-Yonah, B.A., A.M., Ph.D., J.D., Irwin I. Cohn Professor of Law
Samuel Bagenstos, B.A., J.D., Frank G. Millard Professor of Law
Nicholas Bagley, B.A., J.D.
Nicholas Bagley, B.A., J.D.
Michael S. Barr, B.A., M.Phil., J.D., Roy F. and Jean Humphrey Proftit Professor of Law
Laura N. Beny, B.A., M.A., J.D., Ph.D.
Evan H. Caminker, B.A., J.D.
Branch Rickey Collegiate Professor of Law
Sherman J. Clark, B.S., J.D., Kirkland and Ellis Professor of Law
Daniel Crane, B.A., J.D., Frederick Paul Farth, Sr. Professor of Law
Steven P. Croley, A.B., J.D., M.A., Ph.D., Harry Burns Hutchins Collegiate Professor of Law
Kristina Daugirdas, A.B., J.D.
Rebecca S. Eisenberg, B.A., J.D., Robert and Barbara Luciano Professor of Law
Phoebe C. Ellsworth, A.B., Ph.D., Frank Murphy Distinguished Professor of Law and Psychology
Richard D. Friedman, B.A., J.D., D.Phil., Ame and Allan F. Smith Professor of Law
Bruce W. Frier, B.A., Ph.D., John and Teresa D'Arms Distinguished University Professor of Classics and Roman Law
Monica R. Hakimi, B.A., J.D.
Daniel Halberstam, B.A., J.D., Eric Stein Collegiate Professor of Law
James C. Hathaway, LL.B., LL.M., J.S.D., James E. and Sarah A. Degan Professor of Law
Scott Hershovitz, A.B., M.A., D.Phil., J.D.
Donald J. Herzog, A.B., A.M., Ph.D., Edson R. Sunderland Professor of Law
James Hines Jr., B.A., M.A., Ph.D., L. Hart Wright Collegiate Professor of Law
Nicholas C. Howson, B.A., J.D.
Ellen D. Katz, B.A., J.D., Ralph W. Aigler Professor of Law
Vikramaditya S. Khanna, B.C.A., LL.B., S.J.D., William W. Cook Professor of Law
# TABLE OF CONTENTS

## ARTICLES

**Prosecutorial Discretion and Environmental Crime Redux:** Charging Trends, Aggravating Factors, and Individual Outcome Data For 2005-2014

– David M. Uhlmann

**Can a State's Water Rights Be Dammed? Environmental Flows And Federal Dams In The Supreme Court**

– Reed D. Benson

**Reconciling Police Power Prerogatives, Public Trust Interests, and Private Property Rights Along Laurentian Great Lakes Shores**

– Richard K. Norton and Nancy H. Welsh

## NOTES

**Examining the Administrative Unworkability of Final Agency Action Doctrine as Applied to the Native American Graves Protection and Repatriation Act**

– Adam Gerken

**The Locked Gates to Tension City: The Commission on Presidential Debates, the FEC, and the Two-Party System**

– Tommy La Voy