

Research Scholar Paper Projects, 2009-10
(Professor Michael Blumm)

These five projects, briefly described below, are for 3rd and 4th year students. All would all involve considerable oversight from me, with the idea that the project would produce a co-authored article. A prerequisite is that you must have completed your “A-paper” requirement. All are two-semester, three-credit projects that require a draft paper by the end of the first semester and a final by either February 15 or March 1.

You must understand and rigorously adhere to my Paper Writing Commandments, available outside my office or from my secretary. You must also fill out a Research Scholar application, appended to this notice, no later than May 22 (and earlier if you have a specific project that attracts you).

Here are the projects I will supervise in 2009-10:

1. *Property As a Cultural Artifact*—This is a pet project of mine. The project is to survey and expand upon concepts in the first-year property course that reflect the changing “felt necessities” of the time. The idea is to show that Property is a dynamic, socially sensitive set of concepts, not a static, fixed idea. I will favor someone who did well in my Property class.

2. *“Background Principles” of Property Law*—This is an update project, a follow-up of a 2005 article (29 Harv. Envtl. L. Rev. 321) in which we explored eight or ten “background principles” of property law under the Supreme Court’s *Lucas v. South Carolina Coastal Comm’n*, where the Court indicated that these principles were defenses to takings claims, even where regulations produce a complete economic wipeout. This project would update the 2005 article’s findings with case law results over the last five years to see if that article’s conclusions are still valid or are in need of qualification.

3. *Columbia River Salmon in the Courts*—This project would be the latest in a series of articles on Columbia River salmon under the Endangered Species Act (36 Envtl. L. 709 (2006) + 38 Envtl L. 47 (2008)). It would feature Judge James Redden’s latest decision, expected at any time, examining in particular the effect of a recent settlement between the Bonneville Power Administration and several Indian tribes on the court’s decision.

4. *The Effect of Comment Agencies on NEPA Compliance*—This is another update project, although involving a 20-year period. In 1990 (14 Harv. Envtl. L. Rev. 277), we published an article suggesting that comments submitted by governmental agencies during the NEPA process had a material effect on court’s determinations of whether action agencies satisfied the National Environmental Policy Act. This project would survey NEPA litigation in the ensuing two decades, concentrating mostly on circuit court decisions, to determine whether our 1990 conclusions still hold up.

5. *“Takings” of Water Rights*—In early 2009, in *Casitas Municipal Water Dist. v. U.S.*, a divided *en banc* Federal Circuit refused to reconsider a 3-judge decision in late 2008, which concluded that the federal government owed constitutional compensation for endangered species protections that restricted the district’s water deliveries. This is only the latest (although most disturbing) decision

concerning the federal government's alleged takings of water rights, after decisions involving Tulare Lake and Klamath Lake in the Court of Federal Claims. This casenote would examine these decisions and decide whether there should be special rules applicable to water rights restrictions that make constitutional compensation more appropriate in the water rights context than in other property contexts.