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## Water Law: Cases and Materials, by Frank J. Trelease

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## BOOK REVIEWS

**WATER LAW: CASES AND MATERIALS**, by Frank J. Trelease. Minn: West Publishing Co., 1967. Pp. 358.

Dean Frank Trelease has accomplished several commendable goals in this new book on *Water Law*. Of paramount importance is the fact that he has created a superb teaching tool. It is in no way a detraction to state that *Water Law* is essentially structured from the first four chapters of *Cases on Natural Resources*, which he co-authored with Harold S. Bloomenthal and Joseph R. Geraud, since that 1965 textbook has gained widespread acceptance for its competence. In cutting the water law elements adrift from the mining and oil and gas law components of the natural resources field, Dean Trelease is giving overt recognition to the fact that water law involves policy and decision-making considerations which are of critical importance to an upcoming generation which will share the chagrin of the 6-meal-a-day teenager who finds himself clothed in unsanforized jeans.

In writing *Water Law*, Frank Trelease has incorporated the key elements from the wealth of new material which is cascading into the subject stream, and has organized the material into what he terms a "functional approach to water rights." In so doing, he has, by this organization and his note materials, provided also a functional approach to the entire "water shed" of competing demands in an increasingly complex and frustrated society.

To one oriented, as is this reviewer, to the Eastern shores, a first scanning of the book suggested the reaction of the little girl struggling to find words of appreciation to a grandmother who had sent a gift book on penguins—a feeling that this book tells more about Western water law than I was interested in knowing. But it requires only a few pages of reading to stimulate the rumination that even Dean Trelease probably didn't realize the full import of his Preface comment, which, in admitting and justifying the book's "definite Western flavor," counsels:

"The materials have been successfully used in an eastern state interested in western ideas and experi-

ences as background for new eastern problems and legislative proposals.”

The reviewer was, very early in the book, brought to a never-before-thought-of concept in his own inquiries into meaningful criteria for weighing demands of freeway proponents in the District of Columbia against insistence by those to be consequentially displaced, that the status quo be maintained. The crux of this problem, too, lies in the fact that a natural resource, (in this case spatial geography itself) is insufficient in quantity to satisfy all of the demands now sought to be imposed on it. This is the sad, basic fact of life in Megalopolis, America. New York is downstream on the air current from Chicago, and New York itself imposes more demands on its air supply than that supply can accommodate. Subterranean transit routes which piggy-back high rise “air-right” dwellings and commercial establishments draw a conglomerate mass of people and vehicles into the gelatinous atmosphere of central city, while the “prior appropriator” of the surface is too often bludgeoned into a “fair market value” ticket good only for a centripetal routing into the over-appropriated urban space reservoir. Those with sufficient means appropriate the perimeter source areas and spill over into adjacent basins, struggling against a current of accumulating contra-flow demands. New eastern problems can indeed look to western ideas and experiences as background, but not merely to solve water problems, serious as these may be.

One who has read sufficiently from the library of Dean Trelease’s writings will tend to selfishly regret the almost total absence of gems of Trelease’s philosophy. However, this book is a teaching tool, not an advocate’s brief. Necessary references to his other writings can be found, appropriately sandwiched in with those of other giants in the field.

One who wishes to receive the same thorough up-to-date grounding in eastern water law will have to wait for the publication of the forthcoming book on that subject by Dean Frank Maloney of Florida and Professor Sheldon S. Plager, of Illinois. Their book, too, in its proposed format, takes a functional approach, though of a more tightly structured pattern.

For the student of western water law, Dean Trelease has provided the practitioner's source book as well as a scholar's compendium of the cases which served as turning points for policy evaluations. Dean Trelease presents the student reader with a panorama of water law development through excellently selected and excerpted cases, legislation and note material. The sense of time and purpose is imparted so smoothly that one is almost surprised when he realizes that the relatively simple and expedient rules of water law which he has been accumulating have fragmented with a dischordant crescendo, under the complexities of overdemand, technological competence, economic theories and competing managements, into a maze of conflicting authorities. Perhaps the west in turn might look eastward and contemplate the fate of those who fail to adequately balance the demands for limited resources.

Professor George Goble used to break in his University of Illinois freshmen Contracts students with admonitions that they weren't to be concerned with what the law "ought to be" but rather with what the law "is." Dean Trelease's *Water Law* demonstrates the increasing difficulty with which the courts decide cases on the basis of what the law "ought to be", while couching their decisions in the traditional "the law is" format. There is perhaps no other area of law where this struggle is more apparent, and where the courts so clearly demonstrate that their ultimate function is to decide irreconcilable disputes in a manner environmentally and contextually most tolerable, beneficial and palatable to an ongoing society.

Water Law takes the student from the common law riparian doctrine, through the arid mining regions and their practical, newly-created and uncommon appropriation concepts, to the now modern variations and reasonable-user concepts, and on into the present-day feudal domain overrides. The recent proliferation of control authorities, with broader and broader geographic responsibilities and complex hierarchies of relative-value uses is impressively demonstrated in the last two chapters. When he finishes the text, the student should have the necessary background to listen well and beneficially to the experts; the foundation on which to build a responsible practice and expertise in the subject area; and

a philosophical exposure that should permit him to ask "why" at the right time for the right reason, and thus to move a step ahead towards a contextually satisfactory answer. It would be a wonderful thing if all textbooks could give the student so much.

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