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Tribute to Frank J. Trelease

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Tribute

*Charles F. Wilkinson**

Frank Trelease is our foremost scholar in Western water law but his contributions reach well beyond his primary field. His conception of water law was very broad: Frank correctly perceived water and water law as a cornerstone of society in the American West. As a result, Frank's life work touched on a great many aspects of natural resources law and policy in the region.

Frank was keenly interested in the development of natural resources curricula in the law schools. By the mid-1960s, Clyde Martz had left law teaching to become a leading member of the Denver Bar, so that Clyde's pioneering casebook in natural resources law was no longer current.¹ Frank saw the need to fill the void and in 1965, with Wyoming professors Harold Bloomenthal and Joe Geraud as co-authors, published a major casebook on natural resources with West Publishing Co.² The book covered water law, public land law, and mining law, thus allowing those subjects to be available to law students in an organized format. Frank continued to teach land and mining law and was a valued advisor when George Coggins and I put together our casebook on public land law in the late 1970's.

Frank viewed early Western water law as being inextricably tied to the federal public lands, where many of the early diversions occurred. His water law casebook is fairly liberally sprinkled with references to public land law.³ His integrated understanding of water law and public law is evident in his analysis of the nature of state power over water on the public lands, which remains as sensible a statement as has been made on the subject.⁴ Frank also wrote leading pieces on water rights in federal reclamation projects,⁵ water and energy development,⁶ and federal water rights on the public lands.⁷

Indian lands occupy nearly five percent of the land in the eleven Western states and Frank addressed himself to Indian water rights in various contexts. The result is revealing. Frank was, God knows, amply imbued with the verity of the prior appropriation doctrine—he tried to

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1. See C. MARTZ, *CASES ON NATURAL RESOURCES* (1951).

2. F. TRELEASE, H. BLOOMENTHAL & J. GERAUD, *CASES AND MATERIALS ON NATURAL RESOURCES* (1965).

3. See, e.g., F. TRELEASE & G. GOULD, *WATER LAW: CASES AND MATERIALS* 19-22, 358, 692-700 (4th ed. 1986).

4. See F. TRELEASE, *LEGAL STUDY NO. 5, FEDERAL-STATE RELATIONS IN WATER RIGHTS* 111-16, 147-48 (including pages 147a-147m (1971)).

5. Trelease, *Reclamation Water Rights*, 32 *ROCKY MTN. L. REV.* 464 (1960).

6. See F. TRELEASE *Contributions to Acquiring Water for Energy: Institutional Aspects* (G. Weatherford ed. 1982).

7. Trelease, *Uneasy Federalism—State Water Laws and National Water Uses*, 55 *WASH. L. REV.* 751 (1980).

export it, after all, not just to Alaska but to Jamaica, the Philippines, and Swaziland. The prior appropriation doctrine, of course, is antithetical to Indian water rights—Indians may have been “first in time” in a larger sense, but not within the formulation of Western state water law. But Frank honestly believed in the rights of people: his essay *Law, Water and People*⁸ is in many ways the embodiment of his professional philosophy. Indians are people who need water, and Frank was considerably nondoctrinaire in recognizing that the prior appropriation doctrine had to bend to accommodate Indian water rights.⁹

The themes of people and land run throughout Frank's writings. One of the most poignant passages in his work involved a meeting with a client named Bergland, when Frank was a young attorney in the office of Ward Bannister, a Denver water lawyer. Bergland was a hardworking farmer—Frank told of how Bergland “had worn his Sunday suit in to see the big city lawyer and I noticed how his biceps filled his sleeves.”¹⁰ At first Frank was lost as to why Bergland was so frightened just because a ditch company was about to shut off his head gate. That changed during the course of the interview in the Denver law office:

Then I understood: if he lost his crop he would lose a year's income, he would miss a payment on the mortgage, and he would lose his farm. On the high plains of northern Colorado, a farm is practically worthless without water. As I watched this big, strong, scared man, I learned what water law was all about. Water law ought to give to Bergland as a good a water right as property law gives him a land right to his farm.¹¹

There are those of us who differ with Frank's view of prior appropriation, but we have no doubt about the enduring worth of his writing and his leadership. Frank's scholarship had absolute integrity. His work was broad and reflected the cross-pressures of the region that he lived in and loved. And he cared about people: The Berglands of the West need, and deserve, a champion and could not have found a finer one than Frank Trelease.

8. Trelease, *Law, Water and People: The Role of Water Law in Conserving and Developing Natural Resources in the West*, 18 Wyo. L.J. 3 (1963).

9. See, e.g., *supra* note 4, at 160-74.

10. See Trelease, *supra* note 7, at 753.

11. *Id.*