



Spring 1979

Solar Law, by Sandy F. Kraemer

James L. Merrill

Recommended Citation

James L. Merrill, *Solar Law*, by *Sandy F. Kraemer*, 19 Nat. Resources J. 460 (1979).
Available at: <https://digitalrepository.unm.edu/nrj/vol19/iss2/17>

This Book Review is brought to you for free and open access by the Law Journals at UNM Digital Repository. It has been accepted for inclusion in Natural Resources Journal by an authorized editor of UNM Digital Repository. For more information, please contact amywinter@unm.edu, lsloane@salud.unm.edu, sarahrk@unm.edu.

BOOK REVIEWS

SOLAR LAW PRESENT AND FUTURE, WITH PROPOSED FORMS

by

SANDY F. KRAEMER

Colorado Springs: Shepard's, Inc.

1978. Pp. 347 + index. \$35.00

Every day, the Earth receives enough sunlight to supply mankind's energy needs for a year. In ten days, the solar energy striking the Earth's surface is equivalent to our planet's total fossil fuel reserves. Solar energy's *forte* is producing low grade heat; therefore, sunlight is an ideal replacement for the fossil fuels we have been burning to heat water as well as living and working space. So what is holding us back? Among other things, economics.

Solar fuel is free but the uncertainty arises of always being able to get to it. Solar economics looks to the law for guaranteed access to sunlight. But there is a catch. A cornerstone of Anglo-American law is the resolution of controversies only as they arise under a specific set of facts. Judge-made law and *stare decisis* are essential to fill the legal void left by even the best legislation. Concrete problems with which this type of law deals will not arise until solar investors and consumers have tangible interests worth litigating to protect. But until these people receive more assurance from the law, they will be understandably reluctant to spend solar. Solar law needs a catalyst to get things started.

Sandy Kraemer's *Solar Law* may help produce that catalyst. Contrary to what its title suggests, this book does not say what solar law is. There isn't much—not yet. Rather, this book is both a survey of what solar law might be and sound philosophy about what it should be. As the first treatise on its new subject, *Solar Law* should stimulate informed, productive thinking about solar energy.

In exploring legal tools which might encourage the use of sunlight, Kraemer analyzes easements, covenants, building codes and zoning ordinances. In addition to providing well-drafted forms, he reviews (and cites) the current law of each and discusses the specific advantages and limitations of these devices as solar regulators. Kraemer also addresses eminent domain as well as public and private nuisance theories under which a "shadowed" solar user might seek relief.

What a "solar right" is remains unresolved. In exploring existing legal concepts which might serve as models, *Solar Law* discusses the water law doctrine of prior appropriation as a means of determining rights to sunlight. As an alternative, Kraemer investigates the Transferable Solar Development Right and isolates the legal issues which

remain to be determined before the TSDR can become a viable solar law theory.

Solar Law's most impressive section, entitled "Solar Perspective," is a short course on active and passive solar technology with a comparison of the advantages and disadvantages of each. Kraemer discusses local solar siting considerations, presents United States sunlight data through maps and statistics, and points out some of the economic and marketing implications of solar energy. While these sections are backed up by a Glossary of technical terms, they are so clearly written and amply illustrated that you probably won't need it.

Solar Law concludes with appendices which survey related topics such as the tax and finance aspects of solar development; the touchy interplay between solar users and public utilities is discussed as are tort liability, warranties and insurance problems affecting solar installations. Kraemer provides a checklist of legal issues arising from incentives and impediments to solar use. The final appendix lists books and periodicals which deal generally with solar energy.

The only bad things about *Solar Law* are its title and price. As Kraemer points out, "[s]olar law is an interdisciplinary branch of knowledge involving law, politics, economics, physics, engineering, architecture, and astronomy."¹ Solar planners must understand scientific concepts (such as how collectors work and solar astronomy), but they should be familiar with energy economics as well. And no solar planner can realistically assess the viability of his proposals unless he knows something about the legal environment in which they must function. Unfortunately, *Solar Law's* terse title and stiff price may deter many people (especially non-lawyers) who ought to read and use it.

Solar energy in the United States has suffered slow growth and reluctant social acceptance. Before the OPEC oil embargo, people advocating direct use of sunlight were largely ignored. Just four years ago, the U.S. Department of Interior did not include the sun as a potential energy resource.² Solar industry people finally are able to predict a surge of growth as the established energy community (even General Electric) and the Department of Energy reconsider the solar option.³ People who expect to be a part of the solar boom have some homework to do. I can't think of a better place to start than *Solar Law*.

JAMES L. MERRILL*

*Member of the New Mexico Bar.

1. Page iv.

2. U.S. Dept. of Interior, *Energy Perspectives* (February 1975). This document presents a picture of both past and projected future energy consumption broken down by sector and source. Nowhere does it mention solar energy.

3. *The Coming Boom in Solar Energy*, BUSINESS WEEK 88 (October 9, 1978).