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## *Cases and Materials on Natural Resources*

By

FRANK J. TRELEASE, HAROLD S. BLOOMENTHAL, AND  
JOSEPH R. GERAUD

St. Paul: West Publishing Co. 1965.  
Pp. xxv, 1131, \$15.00

The Dean of the University of Wyoming Law School has collaborated with two members of his faculty in producing a coursebook covering the law of water, solid minerals, and oil and gas. This is the second coursebook of this scope, the first having been Martz, *Cases and Materials on Natural Resources* (1951). The preface of the Trelease book refers to itself as "a successor" to the Martz book, but it is no mere revision. In choice of materials and in organization, this is a new and original book. It has, as its authors acknowledge, a "western flavor." This is due to the nature of the subject matter rather than to parochialism of the authors. The western flavor is quite strong in the part concerning mining, but is less pronounced in the part on water, and is hardly discernible in the part on oil and gas. Law teachers outside the West will be interested in all or parts of this book.

Like its predecessor, the Trelease book deals separately with its three components. The book could be used, and was intended to be used, either in a course covering natural resources comprehensively or in separate courses limited to one or two of the three areas covered. Unless there is a change in law school curriculums, this book will be accorded only the latter, limited use. According to a recent survey of the teaching of natural resources law,<sup>1</sup> evidently no law school in the United States now offers a course with sufficient scope to permit complete coverage of the Trelease book. Perhaps Dean Trelease and Professors Bloomenthal and Geraud are persuaded that there is pedagogic merit in a comprehensive approach to the law of water, mining, and oil and gas, and hopefully anticipate that their book will help to bring about curricular revision in this direction. If a case can be made for a unified approach, possibly such an approach could best be implemented by materials organized around problems common to several resources instead of materials treating each resource separately. Indeed, the separation in the Tre-

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1. R. E. Clark, *Teaching Resources Law*, 18 J. Legal Ed. 165 (1965).

lease book, is not air-tight. Mining law is presented in the context of the federal public domain. The title for this part of the book is "The Public Domain and Natural Resources." Included under this head, in addition to mining law, are materials concerning laws (past and present) generally governing disposition and management of the public domain, oil and gas development on such lands, and multiple uses of such lands. The emphasis, however, is upon mining law.

This is a property book. The focus is upon the acquisition of property interests in natural resources and the nature of legal protection accorded such interests. Conceivably, the book's orientation could have centered about the shaping of natural resources policy for the nation, the states, or regions. The authors' reliance upon the former approach is consistent with an assumption that most of the law students who use the book will later be more likely to be engaged in representing claimants to natural resources than in public policy formulation. This is not to say that the authors have ignored policy factors. They recognize that the attorney is better equipped to represent his private clients if he understands the nature of broader interests of the community, and the book contains much helpful and relevant material calculated to promote such understanding.

This is a comprehensive work, containing extensive notes and skillfully edited cases. There is such a wealth of information here that the practicing lawyer will probably find it useful as a reference tool.

This is a teachable book, easily adaptable to varying approaches desired by the instructor. Some coursebooks are indelibly stamped with the viewpoints of the authors. Such books are not without merit, and are often stimulating and provocative, but they pose problems for the instructor who may desire a different approach. The text material in the Trelease book is, in the main, factual and neutral. At least the water law part of this book is the product of years of experience by Dean Trelease and others in teaching his materials in mimeographed form.

It is difficult to criticize this book without resorting to nitpicking or suggesting the addition of materials which would unduly lengthen the work. In the latter category, one might suggest that the water law materials could have been strengthened by the inclusion of more material directly related to the role of the lawyer in administrative agencies and other non-judicial forums. The arguments of the advocate in such forums are more likely to involve such questions as economic and engineering feasibility of a proposed project than

such questions as the power of Congress to develop resources or the nature of riparian rights. This book does contain some material on economics, engineering, and hydrology, but something more might be desirable, possibly portions of transcripts of proceedings before administrative agencies and congressional committees, or even a lengthy excerpt from Dean Trelease's recent excellent article, "Policies for Water Law: Property Rights, Economic Forces, and Public Regulation."<sup>2</sup> Insights into the political processes which dominate decision-making as to water resources might be gained from excerpts from such books as Arthur Maas' realistic treatment of the political power of the Corps of Engineers.<sup>3</sup> Perhaps more attention should also be given to the problems of those who do not have water rights but must depend upon negotiation of contracts with those who do have water rights.<sup>4</sup> In this era of large-scale development of water resources, it may be unrealistic to think of water law primarily in terms of the riparian or appropriative rights of a farmer or factory. Even large water consumers such as cities now look to other entities for their water supply. How does water allocation by contract compare with that accomplished by the law of water rights? An expanded book could profitably explore this question.

In summary, this is a superior coursebook which will be welcomed by teachers in the fields covered. The chief regret of this reviewer, who teaches only water law in the natural resources field, is that the water law part of the book has not been separately bound.

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2. 5 *Natural Resources J.* 1 (1965).

3. A. Maas, *Muddy Waters* (1951).

4. Almost thirty pages of the Trelease book are devoted to "Water Distribution Organizations."

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