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## Mary Ellen Wolfe, A Landowner's Guide to Western Water Rights

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resources and substituting new notions of sovereign power over those resources.

*Cases and Materials on Water Law* is a practical guide that provides the reader with a solid introduction to water law and water rights. As noted by the authors, water law consists of much more than the private right to abstract water from its source. Nevertheless, such rights form the basis of most water use, and looking at the impact of other laws and uses upon private property rights is an instructive viewpoint from which to start the study of water law.

*Loretta Schouten*

**MARY ELLEN WOLFE, A LANDOWNER'S GUIDE TO WESTERN WATER RIGHTS**, Roberts Rinehart, Publishers, Boulder, Colorado (1996); 175pp; \$16.95; ISBN 1-57098-093-4, softcover.

*A Landowner's Guide to Western Water Rights* is a general overview of the factors which set western water rights apart from water right issues in the rest of the nation. From simply defining water rights to delving into more complicated areas, this guide serves as a reference tool for those interested in understanding the fundamentals of water allocation in the western United States.

The *Guide* opens with a brief introduction that focuses on the factors that led to the development of western water rights systems. Specifically, the introduction looks at the hardships faced by early settlers as they struggled to cope with the scarcity of water in the West. While the riparian system of water rights worked well for the eastern half of the nation, such a system was unworkable in the arid western climate. Both agriculture and mining, the livelihood of the vast majority of early westerners, required the transport of large quantities of water far from its source.

Part One answers the most frequently asked questions concerning water rights, and then refers the reader to those pages with more detailed answers. Some examples include: 1) What is "diversion"? 2) How is a water right established? 3) What is "beneficial use"? and 4) What is the Public Trust Doctrine? Anyone confused by the basic terminology will find helpful and concise explanations in this section, although the *Guide* is set up in such a way that finding more detailed explanations is always quick and easy.

Part Two is the main focus of the book. Divided into three chapters, Chapter One provides an overview of various topics in western water law, including the three systems of water allocation found in the United States: 1) riparian, 2) prior appropriation, and 3) "hybrid." This chapter also looks at federal reserved water rights, ground water rights, stream adjudications, and instream flow rights. Each topic is treated in some detail, and different water right systems are compared and contrasted.

Chapter Two describes the doctrine of prior appropriation. It be-

gins with the six most common devices routinely used to determine if a water appropriation is valid: diversion, intent, beneficial use, priority, qualifications, and enforcement. Discussed next are the limits placed on appropriations, the most important potential limitation being the Public Trust Doctrine. In the wake of the California Supreme Court's 1983 decision in *National Audubon Society v. Superior Court*, longstanding water rights may be in jeopardy if the water under those rights is found to be necessary to protect the public interest. Chapter Two goes on to discuss how water rights are obtained, transferred, changed, lost, and litigated. Finally, the effect of the *Winters v. United States* decision on federal and tribal reserved water rights is considered.

Chapter Three completes Part Two. It looks at how prior appropriation has weathered the twentieth century, and how it will fare in the future. Whether such issues as reallocation, the Endangered Species Act, conservation, water quality, and watershed management can survive within a system of prior appropriation is a question with which all westerners will struggle well into the twenty-first century.

The *Guide* changes course in Part Three and focuses exclusively on issues pertinent to landowners. This section is broken down into a series of eleven "tips," all of which revolve around certain considerations that should be made before purchasing land. Obviously, many issues should be considered depending on a landowner's needs. For instance, someone who intends to farm would have much more interest in appurtenant water rights than someone building a vacation home.

Part Four profiles eighteen western states by providing direction to appropriate state water rights agencies and summarizing the key attributes of each state's water rights system. Finally, the *Guide* concludes with a glossary of common water rights terminology. Each word in the glossary is in "bold" print in the main text when first used.

*A Landowner's Guide to Western Water Rights* is a detailed look at the unique issues facing western water users. A basic understanding of this complex and often confusing area is within the reach of anyone who can obtain a copy of the *Guide*. Whether westerners realize it or not, we are all dependent on this finite resource. The question of whether the doctrines which served us in the past can be relied on in today's changing world does not lend itself to an easy answer. In the coming century, as the population of the western United States continues to increase, these issues will be brought to the forefront. Only through a thorough understanding of western water rights can we reach a workable solution.

*Matthew G. Paulson*