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Book Review of Natural Resources Policy and Law: Trends and Directions

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Natural Resources Policy and Law:

Trends and Directions. Edited by Lawrence J. MacDonnell and Sarah F. Bates. Washington, D.C.: Island Press, 1993. xiv + 241 pp. Notes, index. Cloth \$38.00, paper \$19.95.

This book, a commemoration of the ten-year anniversary of the University of Colorado Natural Resources Law Center's founding, collects ten diverse essays treating the topic of natural resource law and policy. The authors, all distinguished academic commentators, address broad issues of natural resource use and protection. They attempt to predict the future course of affairs in this field. Fortunately for the reader, the authors' prognostications are mixed with a healthy portion of advocacy. This makes reading *Natural Resources Policy and Law* both stimulating and worthwhile. These essays are written in a clear and accessible style, devoid of excessive legal jargon, and are well-suited both for undergraduate and graduate students as well as general readers.

The first essay, "Rethinking Resources: Reflections on a New Generation of Natural Resources Policy and Law," by Lawrence J. MacDonnell and Sarah F. Bates, discusses how new ways of thinking about natural phenomena like rivers, forests, and the atmosphere have transformed the concept of "natural resources." Once considered commodities available for exploitation, these natural features are being considered within their ecological context, connected to other environmental components. MacDonnell and Bates stress the need for adopting public policies based on integrated natural resource concepts, replacing the "exploitation ethic" with an ethic of sustainable use.

In the second essay, "Natural Resources Law: An Historical Perspective," Clyde O. Martz describes the historical pattern of natural resource policies that encouraged private development of timber, water, minerals, and grazing lands. Martz argues that developments in environmental law during the last twenty-five years stifled needed resource and related economic development. His essay stands out in this collection as a call to view earlier natural resource policy as the beacon to which modern society should return.

George C. Coggins weighs in with an essay on "Trends in Public Land Law (A Title the Inaccuracy of Which Should Become Manifest)." This essay is in striking contrast to Martz. It too describes the evolution of public natural resources law yet it finds current shortcomings to be "simply the residue of more or less ad hoc developments over two centuries" (p. 51). Coggins concludes his section with predictions of future trends in public natural resources law. Among his predictions are that both multiple use management and the prior appropriation doctrine of water allocation are doomed because "both prior appropriation and multiple use are constructs of an age that is now irrevocably over, and both fit very poorly with modern management imperatives and priorities" (p. 59).

Lawrence J. MacDonnell has written an essay entitled "Mineral Law in the United States: A Study in Legal Change." In his view, the legal changes he discusses reveal increased significance of land and other resource values and at the same time decreased importance in American mineral development. An example of this point is made in the context of the constitutional regulatory "taking" issue, which MacDonnell believes has shifted toward upholding significant government restrictions on mining.

In "Oil and Gas Law at the End of Its Great Era," Richard C. Maxwell provides a survey of oil and gas case law decisions over the last decade. He places this area of law and legal practice into an evolutionary context where legal specialists in the field, or "micro-lawyers," promote incremental development of legal doctrine through a series of specific legal case decisions. Maxwell notes that American oil and gas law springs largely from a common-law process that recognizes private ownership of minerals. David H. Getches writes in "Water Resources: A Wider World" that unprecedented changes are underway in American water laws and institutions, including new requirements for water use efficiency, public participation in decision making, and environmental protection. Getches thinks that water law is changing in a way that emphasizes public interest in water as a resource as opposed to water as an item of private property. After describing trends in water policy, he concludes that major water system construction projects are no longer the primary answer to water problems and that greater efficiency in water use and management must be encouraged. In Getches's view, future societies will recognize that water is a connecting force tying together economic, social, biological, political, natural, and spiritual concerns.

In "Bringing an Ecological Perspective to Natural Resources Law: Fulfilling the Promise of the Public Trust," Joseph L. Sax discusses the impact of the public trust doctrine as defined in the landmark Mono Lake case (*National Audubon Society v. Superior Court*) on new water-project development in California. The focus of his commentary is a 1990 California decision in *Environmental Defense Fund v. East Bay Municipal Utility District*, the first case to apply the Mono Lake rationale to a new water development proposal. The essay describes an unusual example of "judicial trusteeship" of the American River and the difficulty in administering the use of a natural resource while at the same time having genuine sensitivity to environmental concerns. Sax also demonstrates the difficulty in using traditional litigation processes to decide competing claims on a natural resource, especially in light of incomplete and often contradictory scientific information.

Chapter 8, entitled "Environmental Law, but Not Environmental Protection," presents A. Dan Tarlock's view that in spite of the dramatic growth of environmental law over the last thirty years, environmental statutes and regulations have not accomplished their fundamental purpose: environmental protection. Environ-

mental law now focuses on minimizing toxic risks and protecting biodiversity while promoting sustainable development. Tarlock's thesis is that current environmental law is "more and more divorced from the actual protection of the biosphere from serious degradation" (p. 164). Tarlock concludes that environmental law "will move in the direction of a more rational risk assessment process for toxic substances, a more science-driven, experimental, and technological approach to biodiversity protection, and sustainable development" (p. 190).

In "Shifting Paradigms of Tort and Property in the Transformation of Natural Resources Law," Richard J. Lazarus outlines the development of property and tort law as they relate to natural resources. He describes interplay between these two views regarding the use of natural resources in our society and concludes by recommending the establishment of a new equilibrium in natural resources law. Finally, Charles F. Wilkinson writes in "A View from the Future: Lessons from Tahoe and the Truckee" that although many policies determining the uses of natural resources in the West come from Washington, D.C., implementation of these policies has always depended on local decisions by the people most closely connected to the resource in question. Wilkinson describes two examples of locally based natural resources management efforts—involving the Tahoe Basin and the Truckee River—and argues that the methods employed to respond to threats to these resources should be emulated in other situations. His essay reminds us of the inevitable development/preservation conflicts present in the West.

Natural Resources Policy and Law demonstrates that there are many views concerning the future of natural resources. Each of these essays deals with the subject of change, both in legal doctrine and in society's understanding of natural resources in our world. While there is no consensus on all points there does seem to be agreement that traditional patterns of thinking and acting are in the midst of a modification that some describe as evolutionary and others say is revolutionary. This volume presents significant views that will frame future legal and public policy debate. Anyone with an interest in natural resource policy should read it.

Reviewed by **Ronald H. Rosenberg.** Mr. Rosenberg is a professor in the Marshall-Wythe School of Law at the College of William and Mary. He is coauthor of *Environmental Policy Law* (Foundation Press, 1991) and is currently researching the environmental implications of American demilitarization.