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Book Review of Water Rights

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BOOK REVIEWS

WATER RIGHTS. J. H. BEUSCHER, College Printing & Typing Co., Madison, Wisconsin. 434 pages.

This technical work, by J. H. Beuscher, Professor of Law at the University of Wisconsin Law School, provides valuable background information and sets forth the structure of the law as it relates to various water matters.

It will be of most use to planners, conservationists, students of law, and to water resource managers. It isn't a book you would curl up by the fireside to read. Professor Beuscher reviews the law on such subjects as diffused surface water, percolating ground water, private rights in water courses, water pollution abatement and interstate water compacts.

He illustrates his points with generous excerpts from court opinions, and with extensive editorial comments. He employs the latter technique to stimulate interest in the particular topic at hand. The book will serve as a handy research tool for those who are concerned over the quality of our water resources, and the use of water for recreation and other purposes.

Judging from the activities of Congress, there is an increased national awareness of the need to protect and preserve our water resources. This awareness has manifested itself in the Congress in water pollution abatement legislation. Professor Beuscher devotes an entire chapter to the general subject of water pollution, a recognition of the importance of this subject.

In discussing the role of the federal government in the water pollution problem, Professor Beuscher cites the Clean Waters Restoration Act of 1966 and its authorization of \$3.4 billion for construction grants for sewage treatment plants through fiscal 1970-71. The House of Representatives has appropriated only \$203 million for such grants in 1968, a reduction of more than half from the earlier authorization of \$450 million for that year. The House Appropriations Committee, in recommending this cut, noted that there would be an estimated carry-over of \$44.3 million in unobligated balances from fiscal 1966-67.

Since that time, however, there has been testimony that as of July 31, 1967, there were 1,805 applications on hand requesting grant funds of \$953.3 million. There are indications that the application process

was relatively slow while policies were being formulated and information on procedures was being disseminated. With requests on hand totaling \$953.3 billion, the program apparently is now moving along in high gear.

Professor Beuscher also discusses the development of water quality standards under the provisions of the Water Pollution Control Act, as amended. The Administration regards the setting of these standards as the most significant pollution control task the federal and state agencies concerned have had to face over the past year. In the eyes of the Administration, standards will be the keystone to the massive clean-up program which lies ahead. The standards of about a dozen states have been approved. In general, the Department of the Interior, the agency responsible for water pollution abatement, has notified the states that their standards won't be approved unless they provide for upgrading waters now polluted and for protecting waters already clean. The Department anticipates it will have acceptable standards for almost all interstate and coastal waters by the end of this year. The bulk of the acceptable state standards will have been approved earlier than that.

The setting of standards is only the first phase of the process. The second and continuing phase will be even more challenging and demanding. In the second step the federal and state governments must monitor water quality to assure there is continuing compliance with the standards.

The book touches only briefly on other emerging problems on our waterways. These include thermal pollution, agricultural run-offs and eutrophication.

Studies are under way on the possibility of offering monetary incentives to those industries which assume the lead in installing devices to abate pollution. These would be in the form of direct subsidies or tax write-offs.

A few figures from Professor Beuscher's chapter on pollution serve to point up the magnitude of the problem that faces the nation. He observes, for example, that the average annual stream flow which discharges into the oceans from the continental United States is essentially fixed and amounts to about 1,100 billion gallons per day. The latter figure includes water that is returned to the stream flow after being used by man, with its quality usually altered in one way or another.

Professor Beuscher points out that in 1954 some 300 billion gallons of the total were withdrawn daily, of which 110 billion gallons were depleted by consumptive use, and 190 billion gallons carrying various

wastes were returned to the streams. Projections indicate that by the year 2000 some 889 billion gallons will be used and returned. While 1954 withdrawals amounted to less than a third and waste-ridden returns were less than a fifth of the total; in the year 2000 it is predicted that withdrawals will be a little over four-fifths and polluted returns about two thirds of the nation's entire stream flow.

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POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES.
 THOMAS I. EMERSON, DAVID HABER, AND NORMAN DORSEN. Boston:
 Little Brown & Co., 1967. Vol. I, pp. xxviii, 1-1355; Vol. II, pp. xiv,
 1356-2217, with Table of Contents and Index. \$45.00.

The term "rights" today is a universally used one. For example, the United Nations General Assembly, on December 10, 1948, adopted and promulgated a Universal Declaration of Human Rights, made it applicable to the "human family"; i.e., to "all peoples and all nations", and to affect "the peoples of Members States" and "the peoples of territories under their jurisdiction." The Constitution of the U.S.S.R. similarly contains provisions concerning rights. The "personal property right of citizens in their incomes and savings from work", etc., are all "protected by law."¹ Our own Constitution, as with many of those

1. Art. 10. There are other Articles which mention rights, e.g., Art. 17 reserving to "every Union Republic" the "right freely to secede from the U.S.S.R. . . ." This, of course, is a political right reserved to a political subdivision. Here the appropriate provisions are found in Chap. X, entitled "Fundamental Rights and Duties of Citizens," comprising Arts. 118-133. The major distinction between these rights and those mentioned in our own Constitution and Amendments may be illustrated by Art. 118's "right to work," which is "ensured by the socialist organization of the national economy," i.e., by the state, or by Art. 125's listing of the rights of freedom of speech, press, assembly, and "street processions and demonstrations" which "are guaranteed by law." See, for analyses of these provisions, HAZARD & SHAPIRO, *THE SOVIET LEGAL SYSTEM* (1962); on criminal procedures, BERMAN, *SOVIET CRIMINAL LAW AND PROCEDURE* (1966); and on civil procedures, LAFAVE, ED., *LAW IN THE SOVIET SOCIETY* (1965). In the United States the right to work is an individual's own personal (see, e.g., Preamble, where "all men . . . are endowed by their Creator with certain unalienable Rights,") right not to be hindered by the government, *Truax v. Raich*, 239 U.S. 33 (1915), and the rights of free speech, etc., are likewise the individuals, e.g., *Griswold v. Connecticut*, 381 U.S. 479 (1965) (especially its Ninth Amendment's references and penumbral rights). Cf., however, Art. IV, § 2, cl. 1 of the Constitution, and Amendment 14, § 1,