



NATURAL RESOURCES JOURNAL

Volume 29
Issue 2 New Challenges to Western Water Law

Spring 1989

Tribute

A. Dan Tarlock

Recommended Citation

A. Dan Tarlock, *Tribute*, 29 Nat. Resources J. 327 (1989).
Available at: <https://digitalrepository.unm.edu/nrj/vol29/iss2/1>

This Tribute 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.

TRIBUTE

This volume is dedicated to the memory of two outstanding water law scholars and teachers who died between 1986–1988, Frank J. Trelease and Charles J. Meyers, both of whom left wonderful legacies to the profession. Frank Trelease was western water law for almost all of his distinguished career until he died at age 77 in October of 1986. Charlie Meyers was the leading water law scholar of his generation until he died, too early, just short of his sixty-third birthday in July of 1988. The collective loss of their scholarship and wisdom is irreplaceable.

Although very different in personality and temperament, Frank and Charlie had much in common. Both served as deans, Frank at Wyoming and Charlie at Stanford. They each published important casebooks,¹ authored major law review articles, and played important roles as consultants or, in Charlie's case, as a practitioner in major developments that shaped western water law since World War II. Finally, both died fully engaged in new projects. Frank was at work on a paper on the *Sporhase* decision for the American Bar Association workshop that preceded this symposium. Charlie had just started work on an article on the public trust doctrine, and in his capacity as special master, was preparing for the damages portion of the *Texas v. New Mexico* litigation. In fact, the last letter he wrote before his death was to Justice White with the details of the upcoming trial.

Although neither ever taught at the University of New Mexico, Frank and Charlie each had a special relationship with the state. Frank served on the Natural Resource Journal's advisory board from its founding and published one of his most famous articles, *Policies for Water Law: Property Rights, Economic Forces, and Public Regulation*,² in the Journal. At the end of his life, he was deeply engaged in the El Paso groundwater transfer problem.³ Charlie's main professional involvement in New Mex-

1. The current editions are F. TRELEASE & G. GOULD, *WATER LAW: CASES AND MATERIALS* (4th ed. 1986) and C. MEYERS, A. TARLOCK, J. CORBRIDGE & D. GETCHES, *WATER RESOURCE MANAGEMENT* (3d ed. 1988).

2. Trelease, *Policies for Water Law: Property Rights, Economic Forces, and Public Regulation*, 5 NAT. RES. J. 1,1 (1965). Professor Joseph Sax wrote in 1987, "Twenty-two years later, I can think of no other single article that I would as promptly recommend to a student for a succinct analysis of the fundamental issues in water law." Sax, *Tribute*, 22 LAND & WATER L. REV. 295, 295 (1987).

3. Trelease, *Interstate Use of Water—Sporhase v. El Paso, Pike & Vermejo*, 22 LAND & WATER L. REV. 315 (1987).

ico water—his role as special master in *Texas v. New Mexico*—may not invoke warm feelings among New Mexicans, but he loved the state. His annual trips to Santa Fe to celebrate his birthday and to go to the opera, on whose national advisory board he proudly served, were cherished times.

Frank began his career by writing a series of articles organizing the basic doctrines of water law and moved on to address all of the important and controversial issues. His career was mainly focused on water law, compared to Charlie's more wide ranging scholarly and professional career, and thus Frank's water law contributions are more numerous and pervasive.⁴ Throughout the West and from Alaska to the Caribbean, Frank's enduring scholarly legacy can be found. To all his work, he brought a deep understanding of the West and the role of water in sustaining this fragile region, but he was never an apologist for some of the reflexive positions of the western water use community. For example, he punctured the states' most cherished myth in his classic article, *Government Ownership and Trusteeship of Water*.⁵ He even admitted the superior powers of the federal government, and acknowledged the relationship between public land ownership and water management. Frank was unusually sensitive to the equity claims of Indian tribes. Even so, consistent with his advocacy of the need for firm water rights, he was equally hard on the recent efforts of environmentalists to use the public trust doctrine to reallocate western waters through the exercise of judicial discretion.

In recognition of his stature as the preeminent water law scholar, the National Water Commission chose Frank to do the background studies on federal-state relations, the most complex and challenging issue in western water law. Charlie supervised this study as a member of the commission staff and described Frank's work as displaying "his usual qualities: sound scholarship, good sense and good humor, and a clarity of expression which reflects clarity of thought. Frank was 58 years old at the time, at the height of his powers, and his qualities were burnished as only happens when precious metals are well worn with age."⁶

Charlie also wrote his own epitaph, because "burnished" is the best word to describe his prose and the power of his intellect. Charlie used language as most of us hope to but never can. He was direct, clear and always penetrating. Both his spoken and written prose had a Mozartian ring. Charlie's involvement with water law began at the top. In the late 1950s, he served as Special Master Rifkind's law clerk in *Arizona v. California*, and used his experience to author a meticulous study of the

4. His bibliography, entitled *The Writings of Frank J. Trelease*, can be found at 22 LAND & WATER L. REV. 305 (1987).

5. Trelease, *Government Ownership and Trusteeship of Water*, 45 CALIF. L. REV. 638 (1957).

6. Meyers, *Tribute*, 22 LAND & WATER L. REV. 291 (1987).

allocation of the Colorado River from the 1922 Compact to *Arizona v. California*.⁷ Like Frank, he advocated a presumption of state rather than federal allocation primacy, and he was an even more forceful advocate of the position that the principal function of the law should be to define exclusive property rights in natural resources so the operation of a market could be triggered. Between 1971 and 1972, Charlie was the assistant legal counsel to the National Water Commission, and its final report, *Water Policies for the Future*,⁸ is his most enduring scholarly legacy to the field.

Water Policies for the Future is the most comprehensive and forward-looking examination of water policy issues written and is even more relevant now than it was in 1972. Charlie's influence on the final report is pervasive. He was a forceful advocate of incorporating efficiency principles into water allocation. As he put it, "[t]he fundamental message of the Commission's Report was that the days of subsidized agricultural water development are over, that existing supplies should be made subject to reallocation, and that reallocation should be effected through the mechanism of market transfers."⁹ The current debates about the future of western water allocation build on the themes sounded in the report.

Together Frank and Charlie made major contributions to water law and set high standards for future scholarship and practice. Their students are among the leading present and future water lawyers. Their scholarship has advanced the law and will continue to shape the debate in areas such as federal-state relations, reserved rights, the public trust doctrine and water marketing.

A. Dan Tarlock
Professor of Law
Chicago-Kent College of Law

7. Meyers, *The Colorado River*, 19 STAN. L. REV. 1 (1966).

8. NATIONAL WATER COMMISSION, *WATER POLICIES FOR THE FUTURE* (1973).

9. Meyers, *supra* note 6, at 292-93.