Cases and Materials on Water Law

Jennifer L. Harder
McGeorge School of Law, jharder@pacific.edu

Gregory S. Weber
Pacific McGeorge School of Law

Bennett L. Bearden
University of Alabama School of Law

Follow this and additional works at: https://scholarlycommons.pacific.edu/facultyteaching

Part of the Water Law Commons

Recommended Citation
Harder, Jennifer L.; Weber, Gregory S.; and Bearden, Bennett L., "Cases and Materials on Water Law" (2014). McGeorge School of Law Teaching Materials. 34.
https://scholarlycommons.pacific.edu/facultyteaching/34

This Book is brought to you for free and open access by the McGeorge School of Law Faculty Scholarship at Scholarly Commons. It has been accepted for inclusion in McGeorge School of Law Teaching Materials by an authorized administrator of Scholarly Commons. For more information, please contact mgibney@pacific.edu.
# Table of Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Introduction to Water Law</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Frank J. Trelease, <em>Federal–State Relations In Water Law</em></td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Overview of Property Rights In Water</td>
<td>5</td>
</tr>
<tr>
<td>2</td>
<td>Prior Appropriation</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>SECTION 1. ORIGIN</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td><em>Irwin v. Phillips</em></td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>SECTION 2. ATTRIBUTES</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>A. Intent And Diversion</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td><em>In Re Adjudication of The Missouri River Drainage Area</em></td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>B. Beneficial Use</td>
<td>29</td>
</tr>
<tr>
<td></td>
<td><em>Idaho Department of Parks v. Idaho Department Of Water Administration</em></td>
<td>29</td>
</tr>
<tr>
<td></td>
<td><em>City of Thornton v. Bijou Irrigation Co.</em></td>
<td>33</td>
</tr>
<tr>
<td></td>
<td><em>Washington Department of Ecology v. Grimes</em></td>
<td>42</td>
</tr>
<tr>
<td></td>
<td><em>Imperial Irrigation District v. State Water Resources Control Board</em></td>
<td>47</td>
</tr>
<tr>
<td></td>
<td>C. Priority</td>
<td>55</td>
</tr>
<tr>
<td></td>
<td><em>State Ex Rel. Cary v. Cochran</em></td>
<td>55</td>
</tr>
<tr>
<td></td>
<td><em>City of Denver v. Northern Colorado Water Conservancy District</em></td>
<td>65</td>
</tr>
<tr>
<td></td>
<td><em>Phillips v. Gardner</em></td>
<td>74</td>
</tr>
<tr>
<td></td>
<td><em>Cache La Poudre Water Users Ass’n v. Glacier View Meadows</em></td>
<td>78</td>
</tr>
<tr>
<td></td>
<td>D. Waters Subject To Appropriation</td>
<td>83</td>
</tr>
<tr>
<td></td>
<td><em>Water: The Yearbook of Agriculture</em></td>
<td>83</td>
</tr>
<tr>
<td></td>
<td><em>State v. Hiber</em></td>
<td>85</td>
</tr>
<tr>
<td></td>
<td><em>R.J.A., Inc. v. Water Users Ass’n of District No. 6</em></td>
<td>91</td>
</tr>
<tr>
<td></td>
<td>E. Geographic Restrictions On Use</td>
<td>98</td>
</tr>
<tr>
<td></td>
<td><em>Coffin v. Left Hand Ditch Co.</em></td>
<td>98</td>
</tr>
<tr>
<td></td>
<td>F. Appurtenance</td>
<td>104</td>
</tr>
<tr>
<td></td>
<td><em>Salt River Valley Water Users’ Ass’n v. Kovacovich</em></td>
<td>104</td>
</tr>
<tr>
<td></td>
<td>G. Protection of Means of Diversion</td>
<td>108</td>
</tr>
<tr>
<td></td>
<td><em>State Ex Rel. Crowley v. District Court</em></td>
<td>108</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>REASONABLE USE</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>REGULATION</td>
<td>123</td>
</tr>
<tr>
<td>A</td>
<td>The Permit System</td>
<td>123</td>
</tr>
<tr>
<td>B</td>
<td>Availability of Water</td>
<td>128</td>
</tr>
<tr>
<td>C</td>
<td>Public Interest</td>
<td>136</td>
</tr>
<tr>
<td>D</td>
<td>Adjudication And Enforcement</td>
<td>161</td>
</tr>
<tr>
<td>4</td>
<td>WATER DISTRIBUTION ORGANIZATIONS</td>
<td>177</td>
</tr>
<tr>
<td>5</td>
<td>LOSS</td>
<td>186</td>
</tr>
<tr>
<td>A</td>
<td>Abandonment</td>
<td>186</td>
</tr>
<tr>
<td>B</td>
<td>Forfeiture</td>
<td>195</td>
</tr>
<tr>
<td>C</td>
<td>Prescription</td>
<td>203</td>
</tr>
<tr>
<td>6</td>
<td>TRANSFER</td>
<td>211</td>
</tr>
<tr>
<td>7</td>
<td>RECAPTURE &amp; REUSE</td>
<td>230</td>
</tr>
<tr>
<td>Chapter 3</td>
<td>Riparian Rights</td>
<td>247</td>
</tr>
<tr>
<td>1</td>
<td>BASIS OF RIGHT</td>
<td>247</td>
</tr>
<tr>
<td>2</td>
<td>REASONABLE USE</td>
<td>258</td>
</tr>
</tbody>
</table>

---

*Hallauer v. Spectrum Properties, Inc.* ............................................. 117
## TABLE OF CONTENTS

**SECTION 3. NONRIPARIAN USES: PRESCRIPTION, GRANT, AND MUNICIPAL SUPPLY** .................................................. 291  
A. Prescription .................................................................................................................. 291  
   *Pabst v. Finmand* ........................................................................................................ 291  
B. Grant ............................................................................................................................. 297  
   *Duckworth v. Watsonville Water & Light Co.* ....................................................... 297  
   *Pyle v. Gilbert* ........................................................................................................... 299  
   *State v. Apfelbacher* ................................................................................................ 302  
C. Municipal Supply ....................................................................................................... 304  
   *Adams v. Greenwich Water Co.* ............................................................................. 304  
   *Hudson River Fisherman’s Ass’n v. Williams* ....................................................... 309  
   *In Re Mdl-1824 Tri-State Water Rights Litigation* ................................................ 314  

**SECTION 4. STATE REGULATION** .............................................................................. 323  
*Muench v. Public Service Commission* ................................................................. 323  
*Village of Tequesta v. Jupiter Inlet Corp.* ............................................................... 327  

**SECTION 5. ABOLITION AND COMBINATION**  
(INCLUDING THE “CALIFORNIA DOCTRINE”) .......................................................... 337  
*Coffin v. Left Hand Ditch Co.* ................................................................................... 337  
*Lux v. Haggin* ............................................................................................................. 337  
*Franco-American Charolaise, Ltd. v. Oklahoma Water Resources Board* ........... 344  

**Chapter 4. Groundwater** ......................................................................................... 355  

**SECTION 1. DOCTRINES** ....................................................................................... 355  
*Crosby, A Layman’s Guide to Groundwater Hydrology* ............................................. 355  
*State v. Michels Pipeline Construction, Inc.* .......................................................... 359  
*State Ex Rel. Bliss v. Dority* ...................................................................................... 367  

**SECTION 2. PROBLEMS** ......................................................................................... 371  
*Physical Differences Between Groundwater and Surface Water* .......................... 371  
A. Managing Storage: Mining, Safe Yield, And Related Concepts ............................. 373  
*Crosby, A Layman’s Guide to Groundwater Hydrology* ............................................. 373  
*Fundingsland v. Colorado Ground Water Comm’n* ................................................. 378  
*Doherty v. Oregon Water Resources Director* ......................................................... 384  
*City of Pasadena v. City of Alhambra* ..................................................................... 392  
*Town of Chino Valley v. City of Prescott* ............................................................... 398  
*Galloway, Land Subsidence* .................................................................................... 405  
B. Protection Of Means Of Diversion ......................................................................... 408  
*Crosby, A Layman’s Guide to Groundwater Hydrology* ............................................. 408  
*Current Creek Irrigation Co. v. Andrews* ............................................................... 410  
C. Physically Connected Groundwater And Surface Water ..................................... 417  
*National Water Commission, Water Policies* ........................................................ 417  
*Postema v. Pollution Control Hearings Board* ......................................................... 421  
*Templeton v. Pecos Valley Artesian Conservancy District* ...................................... 425  
*Alamosa-La Jara Water Users Protection Ass’n v. Gould* ....................................... 430
D. Conjunctive Management of Groundwater And Surface Water
   Introduction ........................................................................................................ 439
   Board of County Commissioners v. Park County Sportsmen’s Ranch, L.L.P. ........ 443

Chapter 5. Interstate Allocation ................................................................. 449
SECTION 1. EQUITABLE APPORTIONMENT ........................................ 449
   Kansas v. Colorado .......................................................................................... 449
   Nebraska v. Wyoming ..................................................................................... 455
   Colorado v. New Mexico ............................................................................... 462
   Colorado v. New Mexico ............................................................................... 466
SECTION 2. INTERSTATE COMPACTS ...................................................... 471
   Hinderlider v. La Plata River & Cherry Creek Ditch Co. ................................. 471
SECTION 3. CONGRESSIONAL APPORTIONMENT ............................... 480
   Arizona v. California ....................................................................................... 480

Chapter 6. Public Rights and Environmental Protection .... 495
SECTION 1. PUBLIC RIGHTS ................................................................. 495
   A. Navigation ................................................................................................. 495
      State Ex Rel. Meek v. Hays ......................................................................... 495
      Brannon v. Boldt ......................................................................................... 504
   B. Public Trust Doctrine .............................................................................. 510
      Illinois Central Railroad v. Illinois ............................................................. 510
      National Audubon Society v. Superior Court ............................................ 520
SECTION 2. ENVIRONMENTAL PROTECTION ........................................ 533
   Introductory Note ......................................................................................... 533
   A. Environmental Assessment ................................................................. 533
      National Environmental Policy Act of 1969 .............................................. 533
      Calvert Cliffs’ Coordinating Committees, Inc. v. United States Atomic Energy Commission ......................................................... 536
      Nepa At 19: A Primer on an “Old” Law With Solutions to New Problems ......................................................................................... 539
      National Wildlife Federation v. Harvey ..................................................... 545
   B. Water Quality Regulation ................................................................. 553
      Introductory Note ....................................................................................... 553
      The Clean Water Act ............................................................................... 554
      Friends of The Everglades v. South Florida Water Management District ......................................................................................... 558
      City of Thornton v. Bijou Irrigation Co. ....................................................... 569
   C. Wetlands Regulation (Clean Water Act Section 404) ............................ 577
      Riverside Irrigation District v. Andrews ................................................... 577
   D. Endangered Species .............................................................................. 587
      National Wildlife Federation v. Harvey ..................................................... 587
   E. Inverse Condemnation ............................................................................. 600
      Tulare Lake Basin Water Storage District v. United States ..................... 600
**Chapter 7. Federal Water Law** .................................................................611  
SECTION 1. CONSTITUTIONAL POWERS ..............................................611  
   _Rapanos v. United States_ .................................................................611  
   _United States v. Rands_ ..................................................................621  
   _Kaiser Aetna v. United States_ .........................................................626  
   _Sporhase v. Nebraska ex rel. Douglas_ ...........................................630  
SECTION 2. FEDERAL LEGISLATIVE PROGRAMS (AND PREEMPTION OF STATE LAW) ......................................................637  
   A. Licensing And Permitting of Nonfederal Projects .........................637  
      _First Iowa Hydro-Electric Cooperative v. Federal Power Comm'n_ ...637  
   B. Construction And Management of Federal Projects .......................653  
      _California v. United States_ ............................................................653  
      _Stockton East Water District v. United States_ ............................666  
SECTION 3. RESERVED WATER RIGHTS ..............................................680  
   A. Indian Reserved Rights .................................................................680  
      _Winters v. United States_ ...............................................................680  
      _Colville Confederated Tribes v. Walton_ ......................................689  
   B. Federal Reserved Rights ...............................................................697  
      _Cappaert v. United States_ .............................................................697  
      _United States v. New Mexico_ .......................................................701  
   C. Adjudication And Administration ................................................711  
      _Colorado River Water Conservation District v. United States_ ...711  
      _United States v. Anderson_ ...........................................................721  

**INDEX** ......................................................................................................727