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Jack L. August, Jr., Dividing Western Waters: Mark Wilmer and Arizona v. California

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Jack L. August, Jr., *Dividing Western Waters: Mark Wilmer and Arizona v. California*

ronmental sustainability, financial feasibility, and positive net benefits, among others. Colby suggests using the thirteen criteria to inspire settlement ideas and aid negotiation. Colby finally looks at the economic factors of these settlements and suggests that an economist may facilitate negotiations.

Chapter 12, *Tribal Water Codes*, by Cabell Breckenridge, examines tribal water codes. The author first briefly compares tribal water code with state water laws. Next, the author describes the process of creating tribal water code and some limits on tribal authority to do so. The author closes by comparing and contrasting the specific water codes of five tribes.

Chapter 13, *Tribal Management of Hydropower Facilities*, by Clayton Matt, explores the cultural aspect to tribal water law through the Kerr Dam example. The Kerr Dam is on a site of cultural significance to the Salish and Kootenai people. This chapter traces the history of the Salish and Kootenai people, of the Flathead Reservation, with regard to development of the Kerr Dam. The chapter concludes by discussing the economic and cultural benefit to the tribal people when they have the opportunity to own the Kerr Dam in 2015.

Chapter 14, *The Significance of the Indian Water Rights Settlement Movement*, by the editors, John E. Thorson, Sarah Britton, and Bonnie G. Colby, reviews settlements as the current mode of handling water right disputes. They look at tribal empowerment and capacity building, environmental justice and stewardship, economics, regional water management, and the dispute-resolution processes. The editors conclude with a look towards the future of tribal water law settlements.

Each essay in this collection contains a good background to Indian Law that even the neophyte to the complex world of Federal Indian Law can comprehend. The quotes at the beginning of each chapter set the tone for its contents. Additionally, the "Sidebars" contained in select chapters supply additional detail to cases and concepts discussed by the chapter's author. The book lays out practical ways in which those practicing Indian and water law may better serve tribal interests.

Kate Williams-Shuck

Jack L. August, Jr., *Dividing Western Waters: Mark Wilmer and Arizona v. California*, TCU Press, Fort Worth, Texas (2007); 172 pp; \$32.95; ISBN 978-0-87565-354-9, hard cover.

In *Dividing Western Waters: Mark Wilmer and Arizona v. California*, Jack L. August, Jr. chronicles the epic Supreme Court case of *Arizona v. California*. He approaches this seminal legal battle of the twentieth century, highlighting the underlying events, the influential legal and political figures, and the aftermath. In particular, he focuses on the life and career of one key player, Mark Wilmer, lead trial counsel. Far beyond a mere biographical account, this book pays tribute to Wilmer

and describes the modest attorney's pivotal role in shaping the litigation and, ultimately, the history of water in the American Southwest.

Chapter one, *Midwest to Southwest*, provides the necessary context for the story. The chapter describes the developmental years for both Wilmer and the new state of Arizona. Born July 18, 1903, into a small Wisconsin dairy community, Wilmer spent the better part of his adolescence enjoying the outdoors and working on his family's farm. Against the admonition of his teachers, Wilmer pursued law school and graduated from Georgetown College of Law in 1929. The author traces Wilmer's budding legal career westward to his new state of Arizona. The remainder of the chapter briefly summarizes Arizona's transition to statehood, critical early-water adjudications, and intrastate water policy development.

Chapter two, *The Firm and the River*, begins with Wilmer's Arizona career. The author describes Wilmer's early cases and public service, his developing reputation as one of the state's great trial lawyers, and the beginnings of the legendary Snell & Wilmer partnership. The attention of the chapter then turns away from Wilmer and to the geological and institutional history of the Colorado River itself. The author outlines the interests of both California and Arizona in developing this vast resource. In an effort to foreshadow the subsequent legal and political battles, he emphasizes California's aggressive approach to put the Colorado's main flow to beneficial use at Arizona's expense.

Chapter three, *A Question of Relevance*, focuses on the primary and mutually enforcing pieces of federal legislation affecting the Colorado River, the Colorado River Compact of 1922 ("Compact") and the Boulder Canyon Project Act of 1928 ("Project Act"). Often publicized as the "Law of the River," the Compact divided the Colorado River watershed into an upper and lower basin and allotted water to each. The Project Act, despite Arizona's opposition, provided for the construction of the Hoover Dam and an All-American Canal in California. Since the specific statutory language and legislative records of these federal acts laid the foundation for Wilmer's later legal victory before the Supreme Court, the author covers their evolution in necessary detail.

Chapter four, *Arizona Adrift*, contrasts the state of Arizona, internally divided with no consistent water policy, with the state of California, unified and ready to enjoy the benefits of the new statutory framework. Essentially, while Arizona floundered, southern California and the Imperial Valley prospered and put the Colorado River water to use. The author also summarizes the initial Supreme Court cases commenced by Arizona. In these cases, Arizona sought to secure for its citizens a specific portion of the Colorado River's mainstream flow as well as exclusive rights to those tributaries wholly within the state. The chapter ends with Arizona's intrastate reform in light of drought, power crises, and unfavorable judicial outcomes.

Chapter five, *Arizona v. California*, discusses Arizona's final, bold move to secure water and preserve its economic livelihood, the filing of a complaint with the U.S. Supreme Court to settle the longstanding water dispute. This chapter covers the critical moments of the proceedings held before Special Master Simon Rifkind. In fact, Rifkind's own perspective on the key players and events supplements the narrative. The author pays close attention to the legal arguments of each side, comparing Arizona's untenable theory of equitable apportionment with California's controlling premise of prior appropriation rights. The author sets the stage for Mark Wilmer as he reveals the weaknesses in the Arizona camp that threatened the outcome of the case and the future of Arizona's water.

Chapter six, *Enter Mark Wilmer*, captures the exciting culmination of the suit. Mark Wilmer joined Arizona's legal team at the height of his career. The author describes the diligence with which Wilmer took on the formidable task of trying the case. He scoured the legislative materials in search of a better argument and found his winning legal theory of statutory apportionment in the plain text of the Project Act. Wilmer filed a persuasive amended statement of position with the Court and single-handedly turned the case around. The Special Master, and ultimately the Supreme Court, accepted Wilmer's core argument of clear legislative intent to allocate the mainstream of the Colorado River. The author superbly recounts Wilmer's brilliant strategic move to win water for Arizona and alter the course of history.

Chapter seven, *A Brave New Water World: Law, Politics, and CAP*, analyzes the decision's aftermath. The author depicts Arizona's attempts to put its newly won water to use and the delay tactics and obstacles it met at every political front. After a long series of compromises, Arizona finally secured federal support to begin construction of the infrastructure to deliver water throughout the state. The chapter brings the reader up to the present day and chronicles Arizona's ongoing efforts to manage and protect its precious water resources.

Chapter eight, *That Lawyer from Arizona*, provides a final tribute to Mark Wilmer. The author offers a collection of anecdotes from those closest to Wilmer. In addition, he catalogues Wilmer's subsequent legal victories and notable awards. The chapter concludes with the story behind one particular posthumous honor – the naming of an Arizona pumping station in memory of Mark Wilmer.

Jack L. August, Jr., masterfully condenses the longest case in the history of the U. S. Supreme Court into a worthwhile narrative for practitioners and law students alike. He isolates the case's relevant moments from the thousands of pages of testimony and provides tremendous insight into the history of water law in the American Southwest. Above all, August tells a great story and records the legacy of a

great man, Mark Wilmer, the attorney whose perseverance and legal acumen changed the course of history.

Risa Borowick

Cynthia Barnett, *Mirage: Florida and the Vanishing Water of the Eastern U.S.*, The University of Michigan Press (2007); 239 pp; \$24.95; ISBN 0-472-11563-4, hard cover.

Mirage tells the story of how Florida's continued development of wetlands into residential neighborhoods created water shortages and other problems similar to ones seen in the arid American West. By draining its once abundant water, Florida has not left enough ground water to support its ever-growing population. Barnett compares Florida's water policy with that of other states and poses two key questions: (1) will Eastern states, and specifically Florida, learn from water management mistakes made in the West, and when faced with the new problem of water scarcity; and (2) will Florida learn that continued development does not need to include higher rates of water consumption.

Barnett, a reporter for *Florida Trend* magazine, contends that throughout its history Florida sought to drain its many wetlands to allow more development and never properly considered the long-term effect of such a policy. *Mirage* explains how developers depleted Florida's fresh water supply in order to create increasing numbers of residential and commercial developments. The book discusses the dangerous consequences of such a policy and analyzes how water scarcity leads to conflict and controversy. Thus, *Mirage* provides a comprehensive look at how in one hundred years, Florida's biggest problem shifted from having too much water to not having enough.

Chapter one, "History & Myth," examines Florida's history of draining and filling in its once expansive wetlands. Since the turn of the twentieth century, through the development of Disney World in the 1960s, to the present day, Florida dredged, drained, and depleted its once vast water resources. By taking a historical look at the development of Florida, the book creates its central theme that the idea of Florida having a limitless supply of water is simply a "mirage."

Chapter two, "Conspicuous Consumption," compares America's water usage with Florida's much more wasteful policy. Specifically, over the last thirty years, U.S. water consumption has declined. Conversely, in Florida over the same period both per-person and total freshwater withdrawals have increased as a result of population growth and increased development. The chapter ends by discussing that as a result of such reckless use of water, Florida now consumes more groundwater every day than its water cycle replaces.

Chapter three, "Drained & Diverted," provides lessons to be learned from the American West's policy of using more water than its