

SHOULD WE AIM FOR LIVING IN HEAVEN OR HELL?

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DEAN TRELEASE

“Frank Trelease was western water law for almost all of his distinguished career until he died at age 77 in October of 1986. . . . 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.” [A. Dan Tarlock, Tribute, 29 Natural Resources Journal, 327, 328 (1989)]

Frank J. Trelease, Policies for Water Law, Property Rights,
Economic Forces, and Public Regulation, 5 Natural Resources
Journal 1, 2 (1965)

- “[w]ater law should provide for the maximum benefits from the use of the resource, and this end should be reached by means of granting property rights in water, secure enough to encourage development and flexible enough for economic forces to change them to better uses, and subject to public regulation only when private economic action does not protect the public interest .”

Everything is Up to Date in Kansas City or is It?

- “Everything's up to date in Kansas City They gone about as fer as they can go They went an' built a skyscraper seven stories high About as high as a buildin' orta grow. Everything's like a dream in Kansas City It's better than a magic lantern show.”

Is This View So Unsustainable, Unresilient, So Pre-Historic?



TWO COMPETING VISIONS OF HEAVEN

- THE STATIC: A SUSTAINABLE FUTURE



TWO COMPETING VISIONS OF HEAVEN

- THE DYNAMIC: A RESILIENT-ADAPTIVE FUTURE



HELL



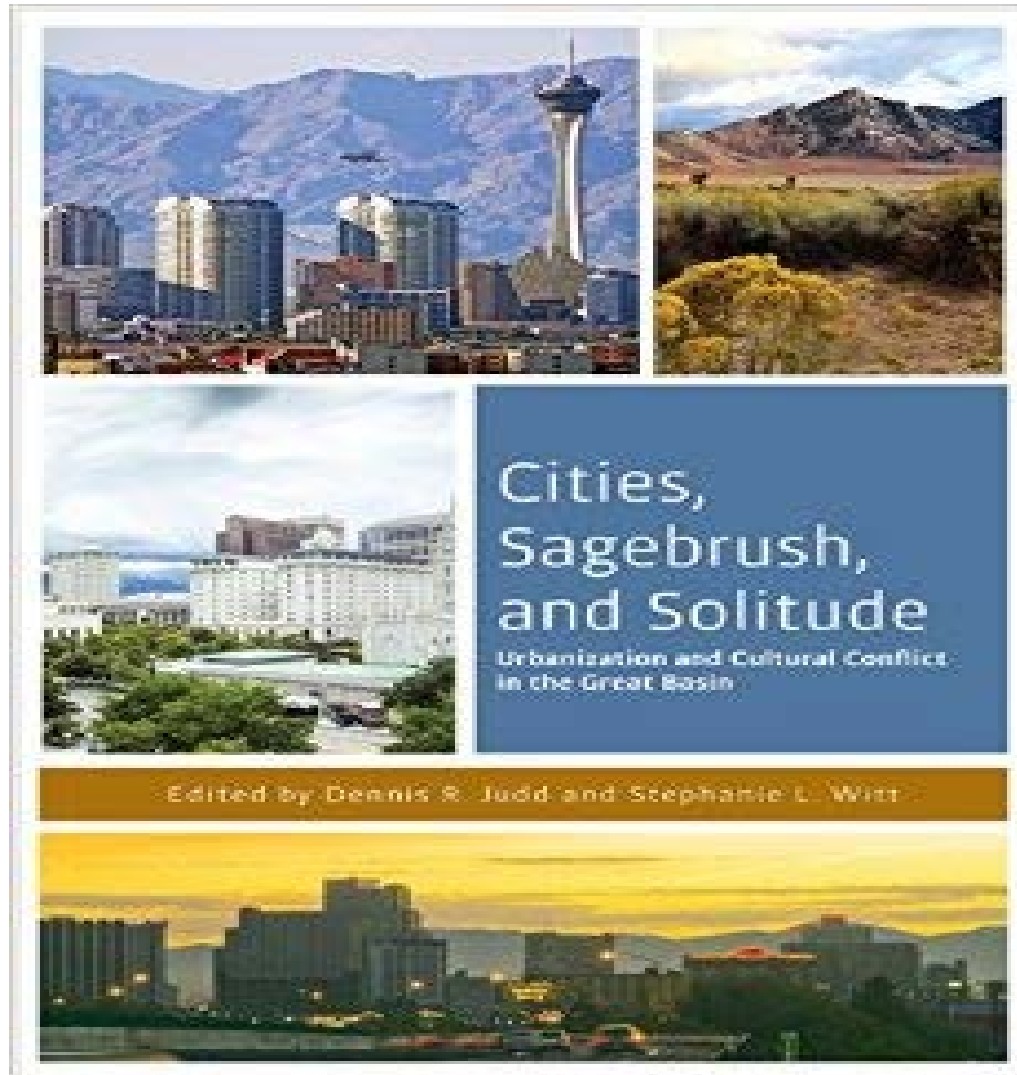
NO WATER TO QUENCH THE FLAMES



WHAT IF WE CAN'T 'SOLVE' THE PROBLEM?

- BOTH SUSTAINABILITY AND REISILENCY THEORY ATTEMPT TO SOLVE THE PROBLEM OF OVER-CONSUMPTION, BUT WHAT IF THE PROBLEM CAN'T BE SOLVED BECAUSE
 - WE CAN'T MITIGATE GLOBAL CLIMATE DISRUPTION- AT LEAST FOR A LONG TIME
 - PEOPLE REFUSE TO GIVE UP CONSUMPTION EVEN IN HELL.

THE WEST LOVES LIVING IN HELL



PLAYING DEVIL'S ADVOCATE

- THE DEVIL SUGGESTS A FOCUS ON
 - FORCING PEOPLE IN AT RISK AREAS TO FOCUS ON REALISTIC WORST CASE SCENARIOS
 - DEPICTING THE PAIN LIKELY TO BE CAUSED BY CLIMATE DISRUPTION
 - FIGURING OUT HOW TO EQUITABLY-FAIRLY-BROADLY DISTRIBUTE THE PAIN OF CLIMATE DISRUPTION



Yes or No?

- Have we improved on Frank's vision that the goal of water law is to create a dynamic private-public system that forces users continually to make hard choices about a scarce resource should be used?

If You Don't Agree With Me, I Can Cite The Highest Authority

- “I went back to a Trelease article that had been very useful to me when it was first published in 1965, though its details had faded from my memory.’ On re-reading it, I was struck to discover how much the central themes of the article are those around which I build the teaching of my water law course: Why treat the law of water (which is a form of property) differently from the way we treat bread, land or potatoes; and how do we decide when to let the use of water be guided by ordinary market transactions, and when to seek public intervention. Frank unerringly captured in that article the salient features of a water law system, and he there pioneered in drawing upon the insights of economists to the analysis of legal problems. Twenty-two years later, I can think of no other single article that I would as promptly recommend to a student for its succinct analysis of the fundamental issues in water law.” [Joseph L. Sax, Tribute to Frank J. Trelease, 22 Land & Water L. Rev. 295 (1987)]