1. Record Nr. UNINA9910149173003321 Autore Getches David H. **Titolo** Water law in a nutshell / / by David H. Getches, Raphael J. Moses, Adell L. Amos Pubbl/distr/stampa St. Paul, Minnesota:,: West Academic Publishing,, 2015 ©2015 Edizione [Fifth edition.] Descrizione fisica 1 online resource (343 pages) Collana Nutshell series Disciplina 346.7304691 Water - Law and legislation - United States Soggetti Lingua di pubblicazione Inglese **Formato** Materiale a stampa Livello bibliografico Monografia Note generali Includes index. Cover Page -- Title Page -- Copyright Page -- Dedication --Nota di contenuto Acknowledgments -- Foreword to the Fifth Edition -- Foreword to the Fourth Edition -- Foreword to the Third Edition -- Foreword to the Second Edition -- Foreword to the First Edition -- OUTLINE -- Table of Cases -- Chapter One. Overview and Introduction to Water Law -- I. The Study of Water Law -- II. Legal Systems for Surface Water Allocation -- A. Riparian Rights -- B. Prior Appropriation -- C. Hybrid Systems --III. Special Types of Water -- A. Groundwater -- B. Diffused Surface Water -- IV. Public Rights -- V. Intergovernmental Problems -- A. Reserved Rights -- B. Federal Actions Affecting State Water Rights -- C. Interstate Problems -- VI. Water Institutions -- Chapter Two. Riparian Rights -- I. History of the Riparian Doctrine -- A. European Precedents -- B. Development in the Eastern United States -- C. The Role of

Riparian Law in the American West -- II. Contours of the Riparian Doctrine -- A. The Basis for Riparian Rights-Riparian Land -- 1. Defining Riparian Land -- a. Watershed Limitation -- b. Divisions of Riparian Land -- i. Unity of Title Rule -- ii. Source of Title Rule -- 2. Types of Watercourses -- a. Streams -- b. Lakes and Ponds -- c. Springs and Other Natural Water Bodies -- d. Underground

-- g. Artificially Created Watercourses -- B. Measure of Riparian Rights-Reasonable Use -- C. Limits on Riparian Rights -- 1.

Watercourses -- e. Oceans and Bays -- f. Out of Basin (Foreign) Waters

Unreasonable Use -- 2. Prohibition of Use on Non-Riparian Lands and

Its Exceptions -- D. Scope of Riparian Uses -- 1. Preference for "Natural" Uses -- 2. Irrigation, Industrial, and Mining Uses -- 3. Municipal Uses -- 4. Storage Rights -- 5. Waterpower -- a. Waterwheels and Mills -- b. Hydroelectric Generation -- 6. Recovery of Cround

Gravel. 7. Discharge of Waste and the Protection of Water Quality -- 8. Reciprocal Rights Among Riparian Users to Use the Entire Surface -- 9. Right to Wharf Out -- 10. Right to Maintain Water Levels -- 11. Scenic Rights -- E. Transfers of Riparian Rights -- 1. Granting Riparian Rights -- 2. Reserving Riparian Rights -- 3. Acquiring Riparian Rights by Prescription -- F. Loss of Riparian Rights -- 1. Effect of Non-Use -- 2. Accretion, Reliction, Erosion, and Avulsion -- 3. Legislation-Moving from a Common Law to Statutory Law System -- III. Permit Systems-Regulated Riparianism -- A. Requiring a Permit to Divert Water -- B. Allowing Water Use on Non-Riparian Land -- C. Issuing Time Limited Permits -- D. Protecting the Public Interest in a Regulated Riparian Jurisdiction -- E. Allocating Water Through an Administrative Agency --Chapter Three. Prior Appropriation -- I. Introduction to Prior Appropriation -- II. Development of Prior Appropriation Doctrine -- A. Federal Statutes -- 1. 1866 and 1870 Mining Acts -- 2. 1877 Desert Land Act -- B. Development of Modern Systems -- III. Elements of Appropriation -- A. Intent -- B. Diversion -- 1. Types of Diversions --2. Due Diligence Requirement and Conditional Rights -- 3. Exceptions to the Diversion Requirement -- C. Beneficial Use -- D. Waters Subject to Appropriation -- 1. Watercourses -- a. Streams -- b. Lakes and Ponds -- c. Springs -- 2. Waters Made Available by Human Effort -- a. Foreign and Developed Water -- b. Salvaged Water -- 3. Withdrawals from Appropriation -- a. Maintenance of Instream Flows -- b. Reservations for Future Uses -- IV. Priority and Preferences -- A. Priority -- B. Qualifications of the Senior's Right -- C. Enforcement of Priorities -- D. Preferences -- V. Extent of the Appropriative Right -- A. Measure of the Right: Beneficial Use -- B. Beneficial Use as a Limit. 1. "Duty of Water" Limitations -- 2. Reasonably Efficient Means of Diversion -- 3. The Evolving Concept of Beneficial Use and the Public Trust Doctrine -- C. Recapture and Reuse -- 1. Total Use Must Not Exceed Water Right -- 2. Reuse Limited to Original Land -- VI. Procedures for Perfecting and Administering Rights -- A. Permit Systems -- 1. Purpose -- 2. Constitutionality -- 3. Permitting Procedures -- a. Filing -- b. Notice -- c. Hearing -- d. Issuance of Permit -- 4. Statutory Criteria -- 5. Public Interest Considerations and the Public Trust -- B. Adjudication -- 1. General Stream Adjudications (GSAs) -- 2. Review of Agency Permit Decisions -- 3. Conflicts Among Water Users -- C. Regulation of Water Distribution -- D. The Colorado System -- VII. Transfers and Changes of Water Rights -- A. Transfers Generally -- B. Restrictions on Transfers Apart from the Land -- C. Transbasin Diversions -- D. Changes in Use -- 1. No Harm Rule -- 2. Procedures -- 3. Types of Changes -- a. Change in Point of Diversion -- b. Change in Place of Use -- c. Change in Purpose of Use -- d. Change in Time of Use -- e. Change in Point of Return -- 4. Limits on Changed Use -- VIII. Loss of Water Rights -- A. Abandonment -- B. Forfeiture -- C. Adverse Possession and Prescriptive Rights -- IX. Physical Access to Source and Transportation of Water -- A. Across Federal Public Lands -- B. Across Private Lands Under State Law -- 1. Status of Trespassing Appropriators -- 2. Purchase of Rights-of-Way -- 3. Condemnation of Rights-of-Way -- C. Appurtenancy of Ditch Rights to Water Rights -- X. Storage -- A. Acquisition of Storage Rights -- 1. Storage Water Rights -- 2. Permission to Construct Storage Facilities -- B. Use of Storage Rights -- C. Limits on Storage -- Chapter

Four. Hybrid Systems and Other Variations -- I. Development of Hybrid Systems.

A. California's Early Recognition of Both Riparian Rights and Appropriative Rights -- B. Federal Recognition of Appropriative Rights -- II. Modifications of Riparian Rights in Hybrid Systems -- A. Reasonable Use Limitations -- B. Extinguishment of Unused Riparian Rights -- C. Constitutional Challenges -- III. Administration of Hybrid Systems -- A. Resolving Disputes Among Water Users -- B. Adjudication of Unused Riparian Rights -- C. Prescription -- IV. Other Water Law Variations -- A. Water Law in Louisiana -- B. Hawaiian Water Law -- C. Pueblo Water Rights -- Chapter Five. Groundwater -- I. Basic Hydrology -- A. How Groundwater Occurs -- 1. Permeability of Rock Formations -- 2. Zones of Groundwater Occurrence -- 3. Aquifers -- 4. Underground Streams Distinguished -- B. How Wells Work -- 1. Drilling and Pumping -- 2. Effects of Well Use -- a. Cone of Influence -- b. Effects of Depletion -- 3. Optimum Yield -- II. Allocating Rights in Groundwater -- A. Nature of Rights -- 1. Rights Based on Land Ownership -- a. Absolute Ownership Doctrine -- b. Correlative Rights -- 2. Rights by Prior Appropriation -- 3. Groundwater as a Public Resource -- B. Rules of Liability -- 1. No Liability Rule -- 2. Prior Appropriation-"Junior-Liable" Rule -- 3. Reasonable Use Doctrine -- 4. Restatement (Second) of Torts 858 -- 5. "Economic Reach" Rule -- C. Permits -- 1. Well Permits -- 2. Permits Evidencing a Water Right -- D. Statutory Limits on Pumping -- 1. Protection of Existing Rights -- 2. Legislative Schedules for Groundwater Mining -- 3. Critical Area Legislation -- 4. Takings -- III. Conjunctive Use and Management -- A. Regulation of Groundwater Connected with Surface Sources -- 1. Interaction of Groundwater and Surface Water -- 2. Definition of Hydrologically Connected ("Tributary") Groundwater -- 3. Conjunctive Use Management.

4. Regulation of Tributary Groundwater: The Colorado Example -- 5. Applying the Public Trust Doctrine to Interrelated Sources -- B. Imported Supplies and Intensive Management: The California Example -- IV. Groundwater Recharge and Storage -- V. Controlling Groundwater Contamination -- A. Regulation of Groundwater Pumping -- B. Regulation of Polluting Activities -- 1. State Regulation -- 2. Federal Regulation -- C. State Judicial Remedies -- Chapter Six. Diffused Surface Waters -- I. Diffused Surface Waters Distinguished from Watercourses -- A. Diffused Surface Waters -- B. Watercourses --C. Other Waters -- II. Protection from Damage by Surface Flows -- A. Common Enemy Rule -- B. Civil Law Rule: Natural Flow Theory -- C. Reasonable Use Doctrine -- D. Public Control of Surface Drainage -- 1. Public Drainage Projects -- 2. Public Restrictions on Draining Wetlands -- III. Use of Diffused Surface Waters -- A. Use of Diffused Surface Waters -- B. Rainwater Catchment -- Chapter Seven. Navigable Waters -- I. Context Counts in Determining Navigability -- II. Navigability for Title -- A. Federal Definition of Navigability for Title -- B. State Definitions of Navigability for Title -- C. The Public Trust Doctrine --III. Navigational Servitude -- A. Basis of the Navigational Servitude -- B. Extent of the Navigational Servitude -- 1. Obstructions to Navigation --2. Damage to Property in Navigable Waterways -- 3. Projects on Navigable Streams Causing Damage to Property Rights on Non-Navigable Tributaries -- 4. Waters Rendered Navigable by Private Effort -- C. Measure of Damages for Condemnation -- 1. Value of Water Power -- 2. Site Value -- 3. Water Rights Created Under State Law --IV. Hydropower -- A. Federal Power Act -- B. Conflict with State Law --C. Protection for Fish and Wildlife -- V. Flood Control -- A. The Rivers and Harbors Act.

B. The Flood Control Acts.

Sommario/riassunto

This comprehensive treatment of water law has become a standard reference source and introduction to the subject for law students and practitioners alike.