

BOOK REVIEWS

PUBLIC LAND LAW AND PROCEDURE by Ernest C. Baynard III. Wylie Law Publications as an Addition to the Federal Practice Library, 1987.

Reviewed by *Clyde O. Martz**

Public Land Law and Procedure, by Ernest C. Baynard III, is a highly valuable publication. It helps to fill the void that has existed in the textual treatment of public land laws, regulations and, more significantly, practice and procedure. It offers a problem-oriented perspective and, although encyclopedic in scope, it provides a useful summary overview presentation. It thus will be a valuable starting point for novices and experienced professionals alike in identifying areas of concentration and research in the investigation of diverse public land issues.

Mr. Baynard displays a distinctive writing and organizational style, drawn from his public and private experience, including his role as a negotiator and counselor on critical Alaska land and native claim issues,¹ together with his interest in the evolution and critical evaluation of legal principles and procedures. The book contains a potpourri of detailed recitals of current procedural regulations, broad although sometimes summary analyses of statutes and judicial precedents, and extensive comments on a variety of problems, directions, and perspectives. In fact, the most valuable aspect of the work will be the help it can give to the attorney in identifying issues, pitfalls and areas of research that must be pursued.

The work focuses throughout, in organization, scope and analytical content, on the Federal Land Policy and Management Act of 1976 (FLPMA), the legislation that was generated by a five-year study of the Public Land Law Review Commission. That Act contains the principal guideposts regarding the current authority and responsibility of the Bureau of Land Management in the administration of non-mineral public land resources. Consistent with the FLPMA format, the book addresses in detail acquisitions, disposals, and exchanges of public land, land use planning, wilderness review and designation, withdrawals, segregations, classifications and rights-of-way, access and range management of public lands. The text is broken into short sections, highlighting particular issues identified by FLPMA or arising out of FLPMA practice and the regulations adopted under the Act. These sections are sup-

* Partner, David, Graham & Stubbs, Denver, Colorado.

1. Mr. Baynard's career in public service has included positions as Associate Solicitor for the Division of Surface Mining at the Department of the Interior, and Deputy General Counsel of the Federal Energy Regulatory Commission. He was also recently nominated to be the Assistant Secretary of Energy for Environment, Safety and Health. In addition, Mr. Baynard is currently the Chairman-elect of the Section of Natural Resources of the American Bar Association, and has served as the Editor-in-Chief of *National Resources & Environment*, the journal of that Section.

plemented by detailed chapters, tied to current regulations, and include discussions of administrative and judicial review procedures.

Except by occasional comparisons with procedures discussed with respect to FLPMA, the analyses do not cover in any detail public land problems arising under the Mining Law of 1872, the Mineral Leasing Act of 1920, the Coal Leasing Act Amendments, geothermal leasing problems, parks, monuments or Indian lands, or forest management and forest land administration by the Department of Agriculture. These exclusions may have been necessary to keep the text within reasonable page limits, but they suggest the need for a second volume on broad areas of public land practice that would usefully supplement the current work.

An especially interesting chapter addresses fees and charges, including discussion of a number of potential attacks on agency taxation and fee assessment procedures. That portion is of special interest because, to the reviewer's knowledge, the subject has not been comprehensively addressed as an issue in previous books, law reviews or other publications. As the level of assessed fees is frequently significant, such as in connection with the preparation of environmental impact statements, the fees and charges chapter is particularly noteworthy.

Although the book as a whole is a valuable addition to the practice literature in the public lands area, several shortcomings must in fairness be noted. First, the introductory chapter on "Origins and Development of Public Land Law" is far too summary to be of significant value to the reader. Mr. Baynard may well have tried to cover too much in too little space, and may have created an impression of superficiality that does not characterize the remainder of the work.

A second limitation is the structure of the index, which tends to follow the categories of the table of contents rather than the problem issues that lead the researcher to the answers he seeks. For instance, most if not all constitutional issues are indexed under the general heading "Origins of Public Land Law." Limitations in the general index, however, are largely offset by parallel tables of cases, administrative decisions, statutes and regulations, each of which can lead the user to points of pertinent reference.

A final note of cautious criticism involves the degree of detail used in the administrative procedure and judicial review chapters in discussing existing regulations. The concern is that, as regulations change, the hardbound book may be more misleading than helpful in guiding the reader to the proper practice and procedure. The user must be cautious to pursue the footnote references to the regulation source to confirm the continued validity of the particulars discussed. The user would be well advised to consult, in addition to Mr. Baynard's work, the Bureau of Land Management Manual, which contains the policy guidelines to the field offices regarding the implementation of the particular regulations. This concern will likely be alleviated in large part by the author's apparent intention to publish pocket parts on a timely basis.

In sum, Mr. Baynard must be complimented for an extremely fine research and writing accomplishment. The work as a whole is well perceived,

imaginative and technically sound. It is enthusiastically recommended to all practitioners of public land law.

