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Commemoration: Albert W. Stone

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COMMEMORATION: ALBERT W. STONE

Albert W. Stone's retirement from the faculty of the University of Montana School of Law in June, 1992 concluded a teaching career of thirty-eight years distinguished by Emeritus Professor Stone's sustained contributions to resource and water law scholarship and development. Through the entire course of his career, he has been known also as a dedicated classroom teacher.

Stone joined the UMLS faculty in September, 1954 after receiving his baccalaureate degree from the University of California at Berkeley and his law degree from Duke University. He had practiced in Oakland and Los Angeles, and served as a law clerk to Judge Maurice T. Dooling of the California District Courts of Appeal and to Judge Homer T. Bone of the Ninth Circuit Court of Appeals. He had also taught at San Francisco Law School. Stone's first teaching assignments at UMLS were Equity and Secured Transactions and Contracts. Later he added Remedies to his teaching responsibilities and for many years, he continued to instruct the first-year course in Contracts.

On arrival in Montana, Stone was urged by the late Carl McFarland, then University president, to turn his attention to water law, and thus began nearly four decades of productive inquiry and proposals for reform.

As early as 1956, Stone had initiated and was directing annual Water Resources Conferences, and his first law review article—a commentary on the Hoover Reports on water resources and power—had been published by the *California Law Review*.¹ Then in 1958 his initial articles on the need to improve Montana water law appeared in Volumes 19 and 20 of the *Montana Law Review*.² That research and writing were early steps in Stone's persistent drive for the reshaping of Montana water law from a system characterized by the total absence of records for many if not most water rights, unreliable filings for many water rights, and litigation directed and redirected to some waterways without certain or final results.

Stone's research and writing accelerated in the 1960s, aided in part by the program conducted by the Joint Montana University Water Resources Research Center under the federal Water Resources Research Act of 1964. From that work came his oft-cited article, "The Long Count on Dempsey: No Final Decision in Water Rights Adjudication."³ Stone also

1. Stone, *The Hoover Reports on Water Resources and Power - A Commentary*, 42 CALIF. L. REV. 747 (1955).

2. Stone, *Are There Any Adjudicated Streams in Montana?*, 19 MONT. L. REV. 19 (1957); Stone, *Improving Montana Water Law*, 20 MONT. L. REV. 60 (1958).

3. Stone, *The Long Count on Dempsey: No Final Decision in Water Right Adjudication*, 31

increasingly was called upon as a consultant and draftsman on water law by the Montana Legislative Council, legislative committees, and the Montana Conservation Council. The Montana Groundwater Code of 1961 was a product of those endeavors. Of broader scope were efforts directed toward comprehensive reform of Montana's surface and groundwater law with a code first introduced in the 1969 legislature. Although there was delay until 1973 for the enactment of the code, those years saw no cessation in a movement for both legislative and constitutional reform of Montana's water and resource law.

The adoption of Montana's new constitution in 1971-72 recognizing existing water rights and mandating a system of centralized records gave further impetus to water law reform, accomplished statutorily by the enactment of the 1973 Water Use Act. Stone is credited with being the primary force for the legislation, which initiated an administrative permitting procedure for post-1973 water rights, and established a system—substantially adjusted in 1979—for the statewide adjudication of all pre-1973 water rights.

A sabbatical assignment from the Law School in 1972-73 enabled Stone to intensify his research and to be the principal draftsman of the 1973 Water Use Act. Not long afterward, in a note in the second edition of his water law casebook, the late Frank J. Trelease cited four of Stone's *Montana Law Review* articles urging water law reform, and then observed that "Professor Stone's role changed from that of a voice crying out in the wilderness to that of a major prophet with the enactment of the Montana Water Use Act of 1973"⁴

Stone also served as counsel for the Montana Environmental Quality Council in 1972-73. In that role he drafted the Montana Facility Siting Act and the Montana Strip and Underground Mine Reclamation act, key legislative implementations of the environmental protections mandated by the 1972 Constitution. He was also principal draftsman of the Montana Subdivision and Platting Act of 1973.

In the late 1960s Stone's scholarship turned to another subject that he pursued with the same persistence that marked his efforts to achieve statutory reform of Montana's water law. After carefully reviewing historical and legal developments in Montana and other states, he became a persuasive proponent for the rights of recreationists to use the waters of the state. He wrote comprehensively of public rights in waterways in 1967,⁵

MONT. L. REV. 60 (1958).

4. F. Trelease, *CASES AND MATERIALS ON WATER LAW: RESOURCE USE AND ENVIRONMENTAL PROTECTION* 172 (2d ed. 1974). (Citing in addition to the articles in notes 2 and 3, Stone, *Montana Water Rights—A New Opportunity*, 34 MONT. L. REV. 57 (1973).

5. Stone, *Public Rights in Water Uses and Private Rights in Land Adjacent to Water*, in 1

and specifically addressed the issue in Montana in 1971.⁶ When the question eventually reached the Montana Supreme Court in 1984, the court's decisions gave expansive protection to public rights in the waters of the state that are susceptible to recreational use. Professor Stone filed an amicus brief elucidating the public trust doctrine, and the court relied upon his scholarship, recognizing the doctrine and concluding that "[t]he [Montana] Constitution and the public trust doctrine do not permit a private party to interfere with the public's right to recreational use of the surface of the state's waters."⁷

Stone has played an important role as chronicler as well as reformer of Montana water law. His *Selected Aspects of Montana Water Law* was published by Mountain Press in 1978. Three years later, he built upon that publication in authoring *Montana Water Law for the 1980s*. He supplemented that work in 1988 and currently he is working on a revised edition. He continues to serve as an expert adviser to public and private entities and his historic perspective, counsel, and expertness maintain their force in water law development in Montana.

From the time that the Law School's Public Land Law program was launched in 1979-80 (to include courses, the *Public Land Law Review*, and annual spring conferences) it always has been clear that the program built upon the firm base of Professor Stone's work in water law and on his Natural Resources Law seminar. He was an inaugural speaker at the first Public Land Law Conference in 1980, addressing impliedly reserved federal water rights. His contributions to water and resource law and to the academic program of UMLS have been recognized at each successive conference. The 1990 conference was specifically dedicated to him. Since that time, he also has served as a member of the *Public Land Law Review* Advisory Council.

Both as a tribute to Professor Stone and as a service to readers, with his permission and that of the *Montana Law Review* and *Western Wildlands*, the *Public Land Law Review* is republishing three of Stone's articles. One was written at that important intersection in time between the adoption of Montana's 1972 Constitution and legislative implementation of its provision related to water use. One was written in 1989 and it provides an insightful view of developments under the 1973 legislation. The third is

WATERS AND WATER RIGHTS 177, (R. Clark ed. 1967).

6. Stone, *Legal Background on Recreational Use of Montana Waters*, 32 MONT. L. REV. 1 (1971).

7. *Montana Coalition for Stream Access, Inc., v. Curran*, 210 Mont. 38, 682 P.2d 163 (1984).

Professor Stone's 1991 treatment of a subject long at the forefront of his scholarship: the public use of the water, beds and banks of Montana streams.

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