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Law Casebook Description and Table of Contents: Constitutional Environmental and Natural Resources Law [outline]

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Title: CONSTITUTIONAL ENVIRONMENTAL AND NATURAL RESOURCES LAW

Authors: Jim May and Robin Craig

Description: Constitutional Law influences Environmental Law, Land Use and Natural Resources Law more than ever. These days, nearly three in four reported federal environmental and natural resources law cases involve constitutional issues. Constitutional issues are also more frequently in play at state local, transnational, and international levels.

Constitutional issues include the extent to which Congress can regulate activities that are historically or arguably intrastate in nature (Commerce Clause), delegate congressional prerogatives (Non-delegation doctrine), impel states and state officials to follow federal environmental policies (Preemption, Property and Spending Clauses, and the 10th and 11th Amendments), compensate for conversion of private property for public use (5th Amendment), and conduct warrantless searches (4th Amendment).

This casebook would address trends and recent developments in the field of constitutional environmental law. The casebook is timely because the U.S. Supreme Court has taken an interest in addressing the confluence of the two fields more frequently than ever before. Nearly ten percent of its 2006-07 docket involved environmental cases with constitutional issues.

Possible table of contents, with principal cases and some sources:

1) Chapter One: Introduction:
   a) Constitutionalism
   b) Constitutionalism and Environmental and Natural Resources Law
      i) Excerpt from Lazarus, Restoring What's Environmental About Environmental Law in the Supreme Court
      ii) Excerpt from Craig (I’d pick an excerpt from your ELR piece on the 9th Amendment)
      iii) Excerpt from Rosen, Toward an Unregulated America
      iv) Excerpt from May on Constituting Environmental Rights Worldwide

2) Chapter Two Sources of Authority
   a) Commerce Clause: “The Congress shall have the power … [t]o regulate Commerce … among the several States …” Art. I sec. 8.
      i) Gibbons v. Ogden
      ii) Blackbird Creek
      iii) Wickard v. Filburn
      iv) Iowa Hydro-Electric Corp. v. FPC (1946)
      v) U.S. v. Alfonso Lopez, Jr.
      vi) U.S. v. Morrison
iv) NAHB v. Babbit (D.C. Cir. 1997)
viii) Gibbs v. Babbitt (4th Cir. 2000)
ix) Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers
xi) U.S. v. Hubenka (10th Cir. 2006)

b) Treaty Clause
i) Missouri v. Holland (1920)
c) General Welfare Clause: “Congress shall have Power To … provide for the …
i) U.S. v. Gerlach Live Stock (1950)
d) Spending Clause
i) U.S. v. Dole
e) War Powers
f) Property Clause
i) Johnson v. MCintosh (1823)
ii) Camfield (1897)
iii) Ashwander v. TVA (1936)
iv) Kleppe v. United States (1976)
v) Minnesota v. Block (8th Cir. 1982)
vi) Idaho v. United States
g) Statehood and Equal Footing (“New States may be admitted by the Congress into
this Union.” U.S. Const. Art. 4, Sec. 3))
i) Pollard v. Hagan (1845)
ii) Illinois Central Railroad v. Illinois (1892)
iii) Camfield v. U.S. (1897)
iv) Leo Sheep (1979)
v) Minnesota v. Mille Lacs Band of Chippewa

h) Enclave Clause
i) U.S. v. Bevans (11818)
ii) Fort Leavenworth R.R. v. Lowe (1885)
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j) Enforcement Issues (4th, 5th, 1st Amendments)
k) Equal Protection Clause
l) Executive Power
i) Land Withdrawal
   (1) U.S. v. Midwest Oil (1915)
m) Due Process Clause
i) Procedural
ii) Substantive
n) Executive Authority
i) Withdrawals and Reservations
   (1) U.S. v. Jones & Laughlin Steel Corp (“Steel Seizure”)
3) Chapter Three: Separation of Powers
   a) Citizen suits and qui tam
      ii) United States v. American Electric Power Service Corp. I
   b) Appointments and Removals
   c) Legislative/presidential veto/signing statements
   d) Non Delegation Doctrine: “All legislative Powers herein granted shall be vested in a Congress of the United States.” Art. I.
      i) U.S. v. Grimaud (1911)
      iv) EPA v. American Trucking Association

4) Chapter Four: State’s Rights and Federalism
   a) The Dormant Commerce Clause
      i) Geer v. Connecticut (1896)
      ii) City of Philadelphia et al. v. New Jersey
      iii) Hughes v. Oklahoma
      vi) Maine v. Taylor
      vii) South Central Timber
      viii) Chemical Waste Management, Inc. v. Hunt
      ix) Fort Gratiot Sanitary Landfill v. Michigan Dept. of Natural Resources
      x) C & A Carbone v. Town of Clarkstown
      xi) Granholm v. Heald
      xii) American Trucking v. Michigan Public Service Commission
      xiii) U.S. v. Manning (E.D. Wash 2006)
   b) Reservation of State’s Rights

5) Reservation of Rights and the 10th Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Amend. X.
   i) (1) County of Cortland, New York v. U.S.
      (3) W. Virginia Highlands Conservancy v. Norton
   ii) Sovereign Immunity and the 11th Amendment: “The judicial power of the United States shall not be construed to extend to any suit in law or equity,
commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.” Amend. XI
(1) Seminole Tribe of Florida v. Florida
(2) John H. Alden v. Maine
(3) Federal Maritime Commission v. South Carolina State Port Authority
(4) Kansas v. Colorado
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(6) W. Va Highlands Conservancy
(7) Pennsylvania Federation of Sportsmen’s Clubs v. Norton
(8) Community College v. Katz
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i) Intergovernmental Immunities
   (1) McCulloch v. Maryland (1819)
   (2) Utah Power & Light (1917)
   (3) U.S. v. County of Fresno (1977)
ii) Supremacy and Preemption: “The Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made under the Authority of the United States, shall be the Supreme Law of the Land.” Art IV
   (1) Kleppe v. New Mexico
   (2) Minnesota v. Block (8th Cir. 1981)
   (3) U.S. v. Condon, Attorney General of South Carolina
   (4) U.S. v. Locke
   (5) Ventura County v. Gulf Oil (1980)
   (6) California Coastal Commission v. Granite Rock
   (7) Bates v. Dow Agrosciences
   (8) U.S. v. Massachusetts
   (9) North Carolina ex rel. Cooper v. TVA (W.D. N.C. 2006)
   (10) U.S. v. Manning (E.D. Wash 2006)

c) Takings: “[N]or shall private property be taken for public use without just compensation.” U.S. Const. Amd. IV.
   (1) Regulatory Takings
      (a) Pennsylvania Coal Co. v. Mahon
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      (i) Brace v. U.S. (Fed. Cir. 2006)
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   (d) Kelo v. New London
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(4) Relation to Public Trust Doctrine
   (a) Shively v. Bowlby
   (b) Illinois Central RR v. Illinois, 146 US 387
   (c) Phillips Petroleum Company v. Mississippi

6) Chapter Five: Individual Rights
a) To a Clean Environment
   The Ninth Amendment and Federal Law: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” Amend. IX.
   i)
   ii) State Constitutional Law
      (a) Wyoming
      (b) Pennsylvania
      (c) Hawaii
   iii) Transnational and International Law
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          (a) Oposa (Phillipines)
          (b) Mehta (India)
          (c) Wangari (Kenya)
      (2) Regional and Multilateral Concepts
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   i) Slaughterhouse Cases
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   iii) Waimea Bay Ass’n v. Young (D. Hawaii 2006)
c) To Privileges and Immunities Under Law
d) To Due Process: “No person shall … be deprived of life, liberty or property, without due process of law.” Amends. V and XIV, sec. 1 (”[N]or shall any state deprive any person of life, liberty or property, without due process of law.”)
   i) Substantive Due Process
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         (a) U.S. v. Vertac (8th Cir. 2006)
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7) Chapter Six: Judicial Authority:
   a) Standing and Mootness: Individuals
      i) Sierra Club v. Morton, Secretary of Interior
      ii) U.S. v. Students Challenging Regulatory Agency Procedures
      iii) Lujan v. National Wildlife Federation
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      v) Brad Bennett, et al v. Michael Spear Friends of the Earth, Inc. et al. v. Laidlaw Environmental Services, Inc
      vii) Interfaith v. Honeywell
      viii) Friends of the Earth v. Watson
      ix) Texas Independent Producers v. EPA
      x) Ranchers Cattlemen Action Legal Fund v. U.S. Dept. of Agriculture
      xi) Earth Island Institute v. Ruthenbeck
      xii) Nuclear Information and Resource Service v. NRC ((9th Cir. 2006)

b) States and state instrumentalities
   i) Massachusetts v. EPA
   ii) Nevada v. NRC (D.C. Cir. 2006)
   iii) Utah Ass’n of Counties v. Bush

c) Political Question Doctrine
   i) Baker v. Carr
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