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

Jim May
Robin Craig

Follow this and additional works at: http://scholar.law.colorado.edu/future-of-natural-resources-law-and-policy

Part of the Administrative Law Commons, Animal Law Commons, Biodiversity Commons, Climate Commons, Constitutional Law Commons, Courts Commons, Dispute Resolution and Arbitration Commons, Energy Law Commons, Energy Policy Commons, Environmental Law Commons, Environmental Policy Commons, Ethics and Professional Responsibility Commons, Forest Management Commons, Indian and Aboriginal Law Commons, Jurisdiction Commons, Land Use Planning Commons, Law and Society Commons, Legal Education Commons, Litigation Commons, Natural Resource Economics Commons, Natural Resources and Conservation Commons, Natural Resources Law Commons, Natural Resources Management and Policy Commons, Oil, Gas, and Energy Commons, Oil, Gas, and Mineral Law Commons, Peace and Conflict Studies Commons, President/Executive Department Commons, Property Law and Real Estate Commons, Science and Technology Commons, State and Local Government Law Commons, Sustainability Commons, Torts Commons, Urban Studies and Planning Commons, Water Law Commons, and the Water Resource Management Commons

Citation Information
May, Jim and Craig, Robin, "Law Casebook Description and Table of Contents: Constitutional Environmental and Natural Resources Law [outline]" (2007). The Future of Natural Resources Law and Policy (Summer Conference, June 6-8).

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.
Jim May & Robin Craig, Law Casebook Description and Table of Contents: Constitutional Environmental and Natural Resources Law [outline], in THE FUTURE OF NATURAL RESOURCES LAW AND POLICY (Natural Res. Law Ctr., Univ. of Colo. Law Sch. 2007).

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.
Law Casebook Description and Table of Contents

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
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)

i) Ninth Amendment

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
   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
(5) Bragg v. West Virginia Coal Assn.
(6) W. Va Highlands Conservancy
(7) Pennsylvania Federation of Sportsmen’s Clubs v. Norton
(8) Community College v. Katz
(9) U.S. v. Georgia
(10) Frazier v. Pioneer Americas (5th. Cir. 2006)

b) Supremacy Clause

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
      (b) Keystone Bituminous Coal Co. v. DeBenedictis
      (c) Nollan v. California Coastal Commission
      (d) Lucas v. South Carolina Coastal Council
      (e) City of Monterey v. Del Monte Dunes at Monterey
      (f) Palazzolo v. Rhode Island
      (g) Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency
      (h) Florida Rock Industries v. U.S.
      (i) Brace v. U.S. (Fed. Cir. 2006)
(2) Public Use
   (b) Light v. U.S. (1911)
   (c) Midkiff
   (d) Kelo v. New London
   (e) Lingle v. Chevron
   (f) City of Norwood v. Horney (Ohio 2006)

(3) Just Compensation

(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) State Constitutional Law
         (a) Wyoming
         (b) Pennsylvania
         (c) Hawaii

      iii) Transnational and International Law
           (1) Nation States:
               (a) Oposa (Phillipines)
               (b) Mehta (India)
               (c) Wangari (Kenya)

           (2) Regional and Multilateral Concepts

   b) To Equal Protection Under the Law
      i) Slaughterhouse Cases
      ii) Omeachevarria v. Idaho
      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
         (1) Retroactivity
             (a) U.S. v. Vertac (8th Cir. 2006)
         ii) Procedural Due Process
             (1) Notice and Hearing
                 (a) Reichley v. Penn. DEP (3rd Cir. 2006)

   e) To Speech
i) In Public Parkland
ii) To press
   (1) In re Special Grand Jury 89-2
iii) Commercial:
   (1) PG&E
iv) Regarding Referendum
   (1) Initiative and Referendum Institute v. Walker (10th Cir. 2006)

f) To Free Exercise of Religion
   i) Smith

g) Against Unreasonable Search and Seizure
   i) U.S. v. Faulkner
h) Against Retroactivity and Preclusion of Pre-Enforcement Review

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
      iv) Lujan v. Defenders of Wildlife
      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
      ii) Dames & Moore v. Reagan