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NATURAL RESOURCES LAW
A Case-Based Book of
Problems and Cases



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Law & Business

ASPEN CASEBOOK SERIES

NATURAL RESOURCES LAW

A Place-Based Book
of Problems and Cases

Third Edition

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Law & Business

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For Mark, with love always.

Summary of Contents —C.K.

For Mary, Elizabeth, and Laurel, with love and devotion.

—F.C.

Contents	xi
Preface	xviii
Acknowledgments	xviii

For Anne, Jacob, Sacha, and Theo.

—B.C.B.

1. Natural Resources Law and the Importance of Place	1
Part 1 Federal Lands	33
2. Federal Lands: An Introduction	35
3. Federal Agencies: Authority and Limits	103
4. Non-Federal Powers on Federal Lands	237
5. Forests	285
6. Rangelands	353
7. Minerals	409
8. Energy and the Federal Lands: Making Policy for the Future	481
9. Parks, Monuments, Wilderness, and the Roadless Resource	507
Part 2 Non-Federal Lands	581
10. Tribal Lands and Resources	583
11. State Lands: The Public Trust Doctrine	627
12. Private Lands, Conservation Transactions	693
Part 3 Across the Boundaries	743
13. Wildlife and the Endangered Species Act	745
14. Water	749
15. Wetlands	943
16. Natural Resources and Regulatory Takings	1011
17. Wildland Fire: Bringing It All Together	1069
Table of Cases	1101
Table of Statutes	1109
Index	1115

Preface

Welcome to the Third Edition of Our Casebook

This edition, like the previous, emphasizes the theme of climate change and its impact on natural resources. To set the stage, the first discussion problem in Chapter 1 poses the question whether the atmosphere is a natural resource, supported by readings including *Massachusetts v. Environmental Protection Agency*. The theme of climate change—including its impacts, adaptation, and mitigation—is taken up in each of the chapters throughout the book, applied to the specific natural resource or topic of the chapter. We continue to emphasize discussion problems, and have added a few more to this edition.

The Importance of Place in Natural Resources Law

This casebook was born of a desire to communicate to our students the passion and excitement of place-based learning. To create a sort of virtual field trip, most cases and problems are preceded by a photograph and brief essay describing the place in issue to provide a context for the intense emotions that often accompany natural resource disputes. These visual and context-setting materials are intended to express the power of place, and help our readers to understand that all parties to a natural resource lawsuit may care deeply about the place in question but lack a shared vision as to the highest and best use of that place. Consider, for example, how the potentially dry discussion of federal standing in *Sierra Club v. Morton* (Chapter 3) comes alive when one begins to appreciate the grandeur of the Mineral King Valley in the Sierra Nevada Mountains of California. Photographs help give us a visual understanding of why plaintiff Sierra Club fought strenuously to preserve the valley from development, and why defendant Walt Disney Enterprises fought just as hard to build a destination ski resort amid the forested slopes.

Overall, our goal is to convey both the passion and the urgency underlying many natural resource law disputes for those who understand the places whose fate they will decide. We hope to help our readers become *conservationists*—thoughtful stewards of precious natural places and resources.

The Organization and Coverage of This Book

Natural resources (and the places that support them) rarely respect political boundaries. Rather, resources and ecosystems often cross or straddle human lines separating federal, tribal, state, and private lands. Accordingly, after considering federal places (Part 1) and non-federal places (Part 2), this book examines important boundary-crossing resources, including wildlife, water,

wetlands, and wildland fire (Part 3). The text provides broad, national coverage that goes beyond traditional public lands issues to address a wide array of topics of interest to both eastern and western students. The case excerpts represent a balanced selection of foundational cases and new decisions. Factually rich discussion problems introduce each group of cases. Many of these problems mirror traditional essay exam questions, while others raise contemporary policy issues.

To keep the text as uncluttered as possible, we have omitted most internal citations from judicial opinions, scholarly commentary, and other sources without inserting ellipses.

Support for Instructors

To facilitate teaching and learning, readings are grouped into discrete, assignment-sized chunks, allowing coverage of two to four cases or one problem during each class section. We emphasize primary sources, with relevant statutes and regulations appearing at the beginning of each chapter or with related cases for ease of reference. Additional teaching aids appear on the casebook website: http://www.aspenlawschool.com/books/klein_natural/profMaterials.asp. There, you will find a detailed Teacher's Manual that answers all questions asked in the text, periodic substantive updates, and PowerPoint slides for each chapter (containing, among other things, color versions of the photos in the casebook, maps, and additional photos). Professors adopting this text are encouraged to contact the authors or Aspen Publishers for the password to the website.

On a Personal Note

Those of us who are fortunate enough to teach and study natural resources law share a passion for the places that we study. One of this book's authors recalls fondly a sea kayak trip through the Ten Thousand Islands area of the Florida Everglades. Days were spent navigating through a maze of unnamed mangrove islands, punctuated by the sight of great blue herons, egrets, and porpoises. When the tides demanded, island camp was broken while the sky was still dark, followed by a paddle through glassy waters reflecting the constellations above. The Everglades is unique, representing the largest remaining area of subtropical wilderness in the United States. As the National Park Service explains, once "water flowed freely from Lake Okeechobee to Florida Bay, a river of grass 120 miles long and 50 miles wide, but less than a foot deep." Humans have disrupted the Everglades' water supply by building dams, channels, and canals to make way for agriculture and settlement. Today, many Everglades species hover on the brink of extinction. A major recovery effort is under way, joining federal, state, and local forces.

Another author recalls sunny days rafting down Colorado's Delores River or climbing up the magnificent sand dunes in Great Sand Dunes National Monument (now upgraded to National Park status). Western landscapes deserve the description, "the last best place." That phrase—coined by William Kittredge and Annick Smith for the title of an anthology of Montana writers—captures both the uniqueness and the fragility of the special places of the west. Today,

the region faces the challenge of maintaining its rugged landscape during a population boom fueled by people fleeing other places already changed forever by sprawl, pollution, and the destruction of woodlands, grasslands, wetlands, rivers, and streams.

The third author lives and teaches in the iconographic modern western boomtown. In many ways, Las Vegas represents the challenges facing natural resources law and policy makers. Las Vegas is an urban island amidst a vast sea of beautiful and bountiful desert held as public land. Federal lands that once drew grizzled prospectors, and then were thought to be barren, were later auctioned away for huge sums to subdivision developers. Other lands that are protected by law are being threatened by intensive recreational use by the teeming urbanites, many of who think as little about the imprints of their mountain bike on fragile desert soil as they do about the fact that their new homes displaced threatened desert tortoises. Growth and transition have crowded out a sense of place. Even now, when boom has turned to bust, the question remains whether Las Vegas can reconnect with the incredible natural environment that surrounds them and find a sustainable path into the future.

We hope that the students using this book will come to appreciate on a deep and personal level the importance of place in natural resources law.

C.K.

F.C.

B.C.B.

March 2013

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A Place-Based Book of Problems and Cases

Summary of Contents

<i>Contents</i>	<i>xi</i>
<i>Preface</i>	<i>xxiii</i>
<i>Acknowledgments</i>	<i>xxvii</i>
1. Natural Resources Law and the Importance of Place	1
Part 1 Federal Lands	33
2. Federal Lands: An Introduction	35
3. Federal Agencies: Authority and Limits	103
4. Non-Federal Power on Federal Lands	237
5. Forests	285
6. Rangelands	353
7. Minerals	409
8. Energy and the Federal Lands: Making Policy for the Future	481
9. Parks, Monuments, Wilderness, and the Roadless Resource	507
Part 2 Non-Federal Lands	581
10. Tribal Lands and Resources	583
11. State Lands: The Public Trust Doctrine	627
12. Private Lands: Conservation Transactions	695
Part 3 Across the Boundaries	743
13. Wildlife and the Endangered Species Act	745
14. Water	861
15. Wetlands	943
16. Natural Resources and Regulatory Takings	1011
17. Wildland Fire: Bringing It All Together	1069
<i>Table of Cases</i>	<i>1101</i>
<i>Table of Statutes</i>	<i>1109</i>
<i>Index</i>	<i>1115</i>

Contents

Preface	xxiii
Acknowledgments	xxvii

Chapter 1 Natural Resources Law and the Importance of Place 1

A. Overview	1
B. Discussion Problem: Climate Change and Natural Resources	2
<i>Massachusetts v. EPA</i>	3
C. What Are Natural Resources?	10
<i>In re Tortorelli</i>	10
D. The Importance of Place	15
Barbara Kingsolver, <i>The Memory Place</i>	15
E. The Trust Notion	18
Edith Brown Weiss, <i>The Planetary Trust: Conservation and Intergenerational Equity</i>	18
Jeffrey M. Gaba, <i>We Do Not Hold the Earth in Trust</i>	20
<i>Alec L. v. Jackson</i>	23
F. What Is Conservation?	25
Robert B. Keiter, <i>Keeping Faith with Nature</i>	25
Edward O. Wilson, <i>The Conservation Ethic</i>	27
G. Discussion Problem: Beauty and the Beast	28

PART 1 FEDERAL LANDS 33

Chapter 2 Federal Lands: An Introduction 35

A. Overview	36
B. Discussion Problem: Nye County, Nevada	38
C. Historical Background	41
1. The Birth of the Federal Public Domain	41
<i>Pollard v. Hagan</i>	43
<i>United States v. Gardner</i>	50
2. Land Grants to States	55
<i>Branson School District v. Romer</i>	59
3. Grants to Private Parties	65
<i>Foust v. Lujan</i>	66

4. From Grants to Management	73
<i>United States v. Grimaud</i>	75
<i>Light v. United States</i>	79
5. Public Land Management and Environmental Quality	82
D. The Property Clause: Federal Authority and Federal Ownership	82
<i>Camfield v. United States</i>	83
<i>Kleppe v. New Mexico</i>	90
<i>Minnesota v. Block</i>	95
E. Discussion Problem: Speculating in Private Property Rights in Wilderness	99
Jason Blevins, Controversial Real Estate Speculator Alone in the Wilderness	99
 Chapter 3 Federal Agencies: Authority and Limits	 103
A. Overview	105
B. The Legal Framework for Federal Land Management Decisions: Some Elements of Place-Based Lawmaking	105
1. Discussion Problem: Improving Waterflows in Everglades National Park	106
Everglades National Park Establishment Act of 1947	109
National Park Service Organic Act of 1916	109
2. Statutory Mandates and Organic Acts	110
Robert L. Fischman, The National Wildlife Refuge System and the Hallmarks of Modern Organic Legislation	110
3. Tiered Decisionmaking: Planning and Implementation	114
Robert L. Fischman, The National Wildlife Refuge System and the Hallmarks of Modern Organic Legislation	114
4. The Judicial Enforceability of Plans and Statutory Mandates	117
<i>Norton v. Southern Utah Wilderness Alliance</i>	117
C. The National Environmental Policy Act: Environmental Impact Assessment by Federal Agencies	124
1. Overview	124
2. Statutory and Regulatory Excerpts	125
National Environmental Policy Act of 1969	125
Council on Environmental Quality Regulations on NEPA Implementation	129
3. Is an EIS Required? The Threshold Issues	136
<i>Kleppe v. Sierra Club</i>	137
<i>National Parks & Conservation Association v. Babbitt</i>	142
4. The Scope of Analysis: Cumulative Impacts, Tiering, and Alternatives	149
<i>Kleppe v. Sierra Club</i>	150
<i>Sierra Club v. United States</i>	154

5. The Adequacy of the EIS	160
<i>Robertson v. Methow Valley Citizens Council</i>	161
<i>Dubois v. U.S. Department of Agriculture</i>	167
6. New Information and the Duty to Supplement NEPA Analyses	172
<i>Marsh v. Oregon Natural Resources Council</i>	172
7. NEPA's Impact: Does It Force Better Decisionmaking?	177
Bradley C. Karkkainen, Toward a Smarter NEPA: Monitoring and Managing Government's Environmental Performance	177
D. Agency Action and the Conduct of Judicial Review Under the APA	181
1. Overview	181
2. Statutory Excerpts	182
The Administrative Procedure Act of 1946	182
3. The Right to Judicial Review	185
<i>Citizens to Preserve Overton Park, Inc. v. Volpe</i>	185
4. Judicial Review of Agencies' Exercise of Discretion in Statutory Implementation	190
<i>Mausolf v. Babbitt</i>	190
5. Judicial Review of Agencies' Interpretation of Statutes	195
<i>Wilderness Watch v. Mainella</i>	195
E. Jurisdictional Limitations on the Availability of Judicial Review	200
1. Standing	200
<i>Sierra Club v. Morton</i>	200
<i>Lujan v. National Wildlife Federation</i>	209
<i>Friends of the Boundary Waters Wilderness v. Dombeck</i>	222
2. Ripeness	225
<i>Ohio Forestry Association v. Sierra Club</i>	225
3. Exhaustion of Agency Remedies	230
<i>Kleissler v. U.S. Forest Service</i>	231
F. Discussion Problem: Siting Utility-Scale Solar Generating Facilities on BLM Lands	235

Chapter 4 Non-Federal Power on Federal Lands 237

A. Overview	238
B. Discussion Problem: Burying Nuclear Waste on Federal Land in Nevada	239
C. The Authority of State Law on Federal Land	240
1. Federal Preemption of State Regulation	240
<i>Omaechevarria v. Idaho</i>	241
<i>Ventura County v. Gulf Oil Corp.</i>	244
<i>California Coastal Commission v. Granite Rock Co.</i>	249