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# PREFACE

## Welcome to the Fifth Edition of Our Casebook

We are excited to welcome a new author: Dave Owen of UC Hastings School of Law. Like the previous editions, this one continues to emphasize the theme of climate change and its impact on natural resources. The Fifth Edition has also expanded its recognition of longstanding racial inequity in the context of the settlement of the public domain and implementation of natural resources laws. We continue to emphasize discussion problems and have added several more or revised problems to this edition.

## New in the Fifth Edition

This edition is intentionally shorter and more streamlined than the prior edition and features: an expanded acknowledgment of how the historical settlement of the public domain negatively impacted Native Americans and ignored the tribes' trust status (Chapter 2); the addition of *Center for Biological Diversity v. EPA* (5th Cir. 2019) (discussing procedural injury and associational standing in the context of environmental harms) (Chapter 3); the addition of *Alliance for the Wild Rockies v. United States Forest Service*, 907 F.3d 1105 (9th Cir. 2018) (discussing forest planning, timber harvesting, and ecosystem restoration), changed discussion of state and private forestry regulation, and an integration of the prior edition's chapter on fire into the overall discussion of forestry (Chapter 5); a revised chapter on energy and the federal lands that addresses contemporary debates over the use of federal lands for continued fossil fuel development and expands coverage of use of federal lands and waters for renewable energy development (Chapter 8); discussion of the resolution of the decades-long fight over snowmobile use in Yellowstone National Park and continuing challenges to the Antiquities Act and presidentially designated national monuments, as well as a new section discussing the importance of access to nature and the role of urban parks (Chapter 9); an updated discussion problem on Standing Rock and the Dakota Access Pipeline and a new discussion problem on co-management of federal lands with tribes (Chapter 10); several new public trust doctrine cases, coverage of contemporary efforts to recognize "rights of nature," and an updated problem on climate change and rising seas (Chapter 11); new materials on conservation easements, including the addition of *Wetlands America Trust v. White Cloud Nine Ventures LLP*, 613 S.E. 2d 442 (Va. 2016) (discussing compliance with the terms of an easement), along with key excerpts of the easement at issue in that case (Chapter 12); new coverage of critical habitat, including a new case *Butte Environmental Council v. U.S. Army Corps of Engineers* (9th Cir. 2010) and important agency policy documents implementing the Endangered Species Act (Chapter 13); additional materials on water transfers, groundwater regulation, and reserved rights (Chapter 14); an expanded focus on streams (in addition to wetlands), the substitution of two new cases on waters and activities regulated under section 404, and a new, simplified chapter discussion problem on the three types of mitigation under the CWA (Chapter 15); more streamlined coverage of classic takings cases, which students will likely have covered in other courses, so the chapter focuses on natural-resources-specific cases, including

the replacement of *Casitas Municipal Water District v. U.S.* with *Edwards Aquifer Authority v. Bragg*, 421 S.W. 3d 118 (Texas Ct. App. 2013), along with the addition of discussion problems involving mining, flooding, and Native American treaty rights (Chapter 16).

### **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, and streams and wetlands (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 accompany 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 session. We emphasize primary sources, with relevant statutes and regulations appearing at the beginning of each chapter or with related cases for ease of reference. The accompanying website contains numerous teaching materials, including a detailed Teacher's Manual that answers all questions asked in the text, PowerPoint slides (containing, among other things, color versions of the photos in the casebook, maps, and additional photos), and periodic substantive updates.

### **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 sea kayak trips 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 dolphins. 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 underway, joining federal, state, and local forces.

The second 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 whom 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 Vegans can reconnect with the incredible natural environment that surrounds them and find a sustainable path into the future.

The third author was born and raised in Chicago and continues to live in the Great Lakes region, bringing a different perspective to federal lands and natural resources tied more closely to forests, lakes, and other freshwater resources. More mature urban developments, a historic abundance of water resources, and more distance between urban centers and federal lands and their regulators raise different issues, conflicts, and development pressures than those that exist in the West. One of the joys of teaching this course is bringing together students from different regions of the United States and from different countries, all with very different backgrounds and perspectives on natural resources and watching them learn from each other’s experiences and become excited about visiting the places described in the book.

The fourth author grew up in Virginia, hiking through the forests of the Blue Ridge Mountains. He has worked with rare plants and animals in Delaware, Arizona, Hawaii, and California, giving him a deep appreciation for the beauty of the diverse range of life that shares our planet with us, and the serious threats they face from human activities. Today he lives in California—where he enjoys going with his family to ski, climb, and hike in the Sierra Nevada. California is filled with beautiful and bountiful natural resources and deep conflicts about how to manage those resources. Every issue that is covered in this book is relevant for California today: disputes between the state and federal government over managing resources; how to manage forests in the face of climate change; protecting biodiversity; and adapting to a future of less abundant water.

The fifth author grew up in New England and came to love the outdoors through hiking the White Mountains and canoeing on northeastern rivers. In high school and college, he expanded his horizons to the Rockies, where he spent summers hiking and doing geology research, and the West Coast. He began his teaching career in Maine, a place where natural resources are foundational to the economy and to local identity. He now lives in California, where a combination of stunning natural beauty and ecological richness, environmental fragility, and climate vulnerability makes the importance of natural resource law acutely apparent.

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.

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August 2022