

Researching Natural Resources Law

by Alan K. Pannell

This article provides an overview of the major sources available for researching natural resources law and provides a conceptual framework for conducting legal research in this area. The article focuses on natural resources law in the broader sense, but includes tips for finding research materials related to specific natural resources, such as water, public lands, oil and gas, and minerals.

Research Strategy

When starting a research project in this area, it is helpful to understand that at different points in history, natural resources law has been considered a sub-specialty of both property law and environmental law.¹ Although the distinction between the three areas is somewhat blurred, the researcher still may benefit from looking at property law treatises for issues dealing with constitutional takings, and at environmental law treatises for issues related to ecological concerns. Now that the scope of environmental law has been expanded to cover both privately and publicly managed lands, the researcher of natural resources-related law generally will get the best results by including "environmental law" as a search term for both keyword and index searches. For example, the issues of natural resources damage liability and valuation are ones that are more commonly found in environmental law treatises.

Due to the convergence of these areas, it may be advisable to forego "natural resources" as a search term and look for materials directly related to the natural resource with which you are concerned, because a greater number of current sources are devoted to each specific natural resource than to natural resources law in general. These materials may discuss the history and theoretical framework of natural resources law, and also may help identify critical legal concepts that can be used to get narrower and more relevant keyword search results. Among the newer natural resource con-

cepts researchers may wish to research are comprehensive resource planning, use-based restrictions on public lands, and ecosystem management.

Secondary Authority

Secondary sources generally will be the most efficient way to find the current controlling primary law for the various types of natural resources. They also offer helpful analysis, commentary, or restatements of primary law, and they usually provide extensive bibliographies. Searching a law library catalog can help you quickly find treatises, texts, and databases related to a specific natural resource. By using previously identified keywords and phrases, you may be able to find relevant chapters and books discussing your issue.

Some of the usual starting points for secondary research, such as legal encyclopedias, may not be as helpful for researching the broader concepts of natural resources law, because many issues are covered in the other areas of the law mentioned above. *American Jurisprudence 2d*,² however, does have a few issue-specific sections that may be worth reviewing, most notably in the volumes for Commerce³ and Pollution Control.⁴

*American Law Reports (ALR)*⁵ is somewhat more helpful for case analysis, particularly in relation to original common law principles. Most of the *ALR* annotations related to natural resources can be found by searching the index for "environmental law" or "pollution."

Treatises

Treatises in this area are important research tools for understanding how natural resources law has evolved and for determining the current controlling authority. They also represent a quick



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way of finding relevant case annotations and cross-references to a wide range of other secondary sources. The treatises and texts mentioned here provide a mix of background information and analysis that can be used to identify issues and potential search terms.

Jan G. Laitos's *Natural Resources Law*,⁶ part of the West Hornbook Series, is one of the best introductory texts, in part because it has an extensive natural resources law research guide in the appendix. The book features in-depth commentary on issues of economics and markets, litigation, property interests, the regulatory lifecycle, the legal role of cost-benefit analysis, and judicial review of agency environmental decision making.

Lawrence J. MacDonnell and Sarah F. Bates have edited two collections that can be useful to researchers: *Evolution of Natural Resources Law and Policy*⁷ and *Natural Resources Policy and Law: Trends and Directions*.⁸ These resources cover both historical perspectives and new trends.

Public Natural Resources Law,⁹ by George Cameron Coggins and Robert L. Glicksman, is a basic reference for those dealing with complex federal land or resource issues. It includes information on recent legislative, regulatory, and case law developments affecting the law of federal management and allocation of our natural resources.

For more in-depth treatment of specific areas, Bloomberg BNA's *Environment Reporter*¹⁰ is a multivolume treatise that highlights developments in Congress, federal agencies, the courts, state legislatures, industry, and environmental organizations. There are a number of specialized treatises that provide detailed commentary and practical advice for handling matters of individual natural resources. The following treatises may be useful to Colorado practitioners:

- *Environmental Regulation of Land Use*¹¹
- *Environmental Regulation of Real Property*¹²
- *Waters and Water Rights*¹³
- *Law of Water Rights and Resources*¹⁴
- *Hemingway Oil and Gas Law and Taxation*¹⁵
- *A Treatise on the Law of Oil and Gas: Including Forms, Statutes, Regulations*¹⁶
- *American Law of Mining* 2d.¹⁷

Academic Journals

Law reviews, academic journals, and newsletters are major sources of natural resources law research, particularly with regard to policy issues. Online indexes, such as Index to Legal Periodicals and LegalTrac, are the most efficient tools for finding citations to periodicals; both offer the complete text of most of the articles indexed. For firms and organizations without access to a periodicals index, Google Scholar¹⁸ is becoming an increasingly comprehensive search tool for finding scholarly journals. Google Scholar includes links to full-text versions of articles in the growing number of academic journals that provide free access to content. For subscriber-only journals, Google Scholar provides citations to articles that might be accessible through a subscription database such as HeinOnline.

The researcher can keep up with current trends, and find useful policy arguments, by regularly reviewing journals devoted exclusively to natural resources law issues. The *Natural Resources Journal*¹⁹ was the first scholarly publication devoted to the field, and one of the first to focus on the interdisciplinary nature of natural resources law.

*The Colorado Lawyer*²⁰ publishes substantive natural resources law articles as many as six times per calendar year. The journal and articles are available to members of the Colorado Bar Association as part of their membership. The article citations, if not the articles themselves, also may be archived and accessed through various subscription database services.

Colorado also offers two other journals that can help researchers stay up-to-date on the growing area of international environmental law. One of the leading journals in this field, the *Journal of Energy & Natural Resources Law*, is now edited by the University of Denver Sturm College of Law (DU Law).²¹ The University of Colorado Law School (CU Law) offers the *Colorado Journal of International Environmental Law and Policy*,²² which covers a wide range of environmental issues with international implications.

Congressional Research Service Reports

The bipartisan Congressional Research Service (CRS) is a federal legislative branch agency tasked with providing Congress the best available information and analysis on issues of national policy. Due to the importance of statutory research for modern natural resources law issues, CRS reports are one of the most helpful tools available to the researcher. These in-depth reports are considered both objective and accurate. They often offer multidisciplinary perspectives to policy problems and may include economic analysis, statistical data, and policy discussions. One of the helpful foundational reports available online is "Federal Land and Resource Management: A Primer."²³ Most CRS reports can be accessed for free through educational or nonprofit organization websites by searching for "CRS report" and a specific keyword or phrase.

Bloomberg BNA

Formerly known as the Bureau of National Affairs (BNA), Bloomberg BNA is a leading source of legal, regulatory, and business information. Bloomberg's subject databases provide case law, practice tools, and expert analysis to help practitioners understand the implications of key legal developments, legislative activity, and trends. With up-to-date news from Bloomberg's network of reporters and correspondents, this is one of the best sources for

staying current on environmental law issues. Two databases of special interest to researchers are BNA National Environment Daily (BNA-NED), which covers recent legislative, regulatory, and judicial developments affecting environmental protection, and Natural Resources and Environment (NATRE), which includes selected documents from *Natural Resources and Environment* (formerly *Natural Resources Lawyer*).²⁴ Bloomberg BNA is available at many law firms and most academic law libraries.

Organizations

There are numerous academic, professional, and nonprofit organizations in every area of natural resources law. The benefits of consulting organization websites include article indexes and access to research analysis and policy reports from experts in the field.

One of the most helpful organizations, particularly for the Colorado practitioner, is CU Law's Natural Resources Law Center (NRLC).²⁵ The NRLC offers hundreds of reports, conference materials, videos, and book abstracts, many of which are available at the CU and DU law libraries. The NRLC also publishes several key texts, including Vranesh's *Colorado Water Law*²⁶ and policy papers by the Western Water Policy Program.²⁷ These papers include topics on the history and management of waters in Colorado, and many of them can be found through various online sources.

The Rocky Mountain Mineral Law Foundation (RMMLF) is another important organization offering a number of periodical publications, including the *Rocky Mountain Mineral Law Foundation Journal*²⁸ and proceedings of RMMLF's Annual Institute,²⁹ available via its subscription website or at the libraries of either CU Law or DU Law. The American Bar Association Section of Environment, Energy, and Resources (SEER)³⁰ is a good general source for current environmental, energy, and resources law analysis.

Primary Law

Natural resources are governed by common law, constitutions, statutes, regulations, and policies, and, in the international realm, treaties and conventions. Traditionally, case law research was most important in the realm of natural resources, but since the environmental movement of the 1970s, there has been a massive shift from common law authority to statutory and administrative governance of natural resources. Today, because most natural resource issues are controlled by statutes and regulations, legislative resources in particular likely will be a critical component of any natural resources research project.

Statutes

If the applicable statute or act has already been identified, an annotated federal code³¹ may be the most efficient starting point. The annotations will help researchers quickly identify relevant case law and other secondary sources. However, with so many inter-related statutes relating to natural resources, it is important to consult some of the secondary sources discussed above to identify controlling code sections. Some of the relevant U.S. Code sections can be found in Title 16 (Conservation) and Title 43 (Public Lands). Similarly, annotated codes are a good source for researching relevant provisions of the U.S. Constitution. There are a number of free online sources for searching the U.S. Code, without case anno-

tations, including Cornell's Legal Information Institute (LII)³² and FDsys.³³

Administrative Law

Regulations are the biggest source of new law in this area and are updated often. To find regulations at the federal level, it usually is necessary to directly search the Code of Federal Regulations (CFR), because there are so many revisions and new additions each year. Some of the relevant CFR provisions can be found in Title 15 Commerce and Foreign Trade³⁴ and Title 43 Public Lands.³⁵ The CFR is available free online from a number of sources, including FDsys,³⁶ eCFR,³⁷ and Cornell's LII.³⁸ The Federal Register is a good source for staying current on new pending regulations. It is available free online at FDsys and from the Office of the Federal Register (OFR).³⁹

Case Law

Although common law now plays a smaller role in current natural resources disputes, case law research will be necessary to find recent decisions related to specific contexts (for example, mining regulations on Indian lands). If using the West Key Number Digest, note that most relevant natural resources issues are listed under Environmental Law or resource-specific areas, such as Mines and Minerals, Oil and Gas, or Public Lands. For cases involving the broader natural resources concepts mentioned above, using secondary sources to find case annotations is likely to provide better results.

Conclusion

The research resources presented in this article can serve a number of purposes. By learning how and why the law governing natural resources has evolved, the researcher can better identify research issues and develop an efficient research strategy. Reading expert legal analysis can speed up the research process and help with formulating effective legal arguments. Searching materials with a broader scope can help identify sources related to narrower areas of natural resources law and reveal possible areas of overlap. By periodically reviewing news-oriented resources, the researcher can be prepared for the inevitable changes in this dynamic area of the law.

Notes

1. Fischman, "What is Natural Resources Law?" *Univ. of Colo. L.R.* (2007); Indiana Legal Studies Research Paper No. 43, available at ssrn.com/abstract=880115.

2. *Am.Jur.2d* (Thomson Reuters, 1962–present).

3. 5A *Am.Jur.2d* Commerce § 100 Conservation of Natural Resources (Thomson Reuters, 2012).

4. 61C *Am.Jur.2d* Pollution Control § 1011 Natural Resources Liability (Thomson Reuters, 2012). This section includes information on the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

5. *American Law Reports* (Thomson Reuters, 1919–present).
6. Laitos, *Natural Resources Law* (Thomson Reuters, 2002).
7. MacDonnell and Bates, eds., *Evolution of Natural Resources Law and Policy* (Natural Resources Law Center, University of Colorado Law School, 2010).
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9. Coggins and Glicksman, *Public Natural Resources Law* (2d ed., Thomson Reuters, 2007).
10. Bloomberg BNA's Environment Reporter (Bureau of National Affairs, Inc., 1970–present)
11. Malone, *Environmental Regulation of Land Use* (C. Boardman, 1990–present).
12. Robinson, *Environmental Regulation of Real Property* (Law Journal Seminars—Press, 1982).
13. Beck and Kelley, eds., *Waters and Water Rights* (LexisNexis®, 2009–present).
14. Tarlock, *Law of Water Rights and Resources* (Thomson Reuters, 2011–present).
15. Anderson, *Hemingway Oil and Gas Law and Taxation* (4th ed., Thomson Reuters, 2004).
16. Kuntz, *A Treatise on the Law of Oil and Gas: Including Forms, Statutes, Regulations* (LexisNexis, 1962–present).
17. Rocky Mountain Mineral Law Foundation, *American Law of Mining* (2d ed., Matthew Bender, 1984–present).
18. See scholar.google.com.
19. *Natural Resources Journal* (University of New Mexico School of Law, 1961–present).
20. *The Colorado Lawyer* (Colorado Bar Association, 1972–present).
21. *Journal of Energy & Natural Resources Law* (Sweet & Maxwell, 1983–present).
22. *Colorado Journal of International Environmental Law and Policy* (University Press of Colorado, 1990–present).
23. See cnie.org/NLE/CRSreports/natural/nrgen-17.cfm.
24. *Natural Resources and Environment* (American Bar Association Section of Natural Resources Law, 1985–present).
25. See www.colorado.edu/law/centers/nrlc/index.html
26. Corbridge and Rice, eds., *Vranesh's Colorado Water Law* (University Press of Colorado, 1999).
27. See www.waterpolicy.info.
28. *Rocky Mountain Mineral Law Foundation Journal* (Rocky Mountain Mineral Law Foundation, 2004–present).
29. See www.rmmlf.org/proceedings/default.htm.
30. See www.americanbar.org/groups/environment_energy_resources.html.
31. U.S. Code Annotated (Thomson Reuters, 1927–present); U.S. Code Service (LexisNexis, 1972–present).
32. See www.law.cornell.edu/uscode/text.
33. See www.gpo.gov/fdsys/browse/collectionUScode.action?collectionCode-USCODE.
34. Code of Federal Regulations, Title 15 Commerce and Foreign Trade.
35. Code of Federal Regulations, Title 43 Public Lands.
36. See www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.
37. See ecfr.gpoaccess.gov/cgi/t/text{text-idx?c=ecfr&tpl=%2Findex.tpl}.
38. See www.law.cornell.edu/cfr/text.
39. See www.federalregister.gov. ■