

Syllabus
The George Washington University Law School
Natural Resources Law
Law 440-10
Fall 2008

Professor: Will A. Irwin

Contact information: wirwin@law.gwu.edu; office hours by appointment.

Class meets: Tuesdays and Thursdays, 12:05 – 1:30 p.m.

Course text: Rasband, Salzman, and Squillace, Natural Resources Law and Policy, Foundation Press (2004).

Course overview: This course provides an introduction to the historical, legal, and policy development of the management of natural resources, principally on U.S. public lands. The constitutional bases for -- and limits on -- control over the competing interests in uses of these lands, and the role of generally-applicable statutes, e.g., the Administrative Procedure Act, the National Environmental Policy Act, and the Endangered Species Act, are covered. The statutes governing rangeland, forest, wilderness and wildlife, and mineral resources (e.g., the Taylor Grazing Act, the Federal Land Policy and Management Act, the National Forest Management Act, and the Mineral Leasing Act) are examined. No prerequisites, although environmental law and administrative law would be helpful.

Course policies: Please read the assigned text pages in advance of each session. Class will begin and end punctually. Discussion and exercises as announced in advance. Participation during class is encouraged and expected.

Evaluation: There will be a take-home examination with short-answer, multiple choice, and essay questions.

Class schedule and assignments:

Introduction to Natural Resources Law

Session 1 (8/26)

Introductions

The Nature of "Natural"; Why Should We Protect or Use Natural Resources?
(Text, Chapter 1, pages 1 – 35)

Session 2 (8/28)

Why Are Natural Resources Difficult to Manage?
(Text, Chapter 1, pages 35 – 68)

Session 3 (9/2)

Tools for Managing Natural Resources; Proposals for Reforming Management of Rangeland Resources
(Text, Chapter 1, pages 68 – 77; Chapter 8, pages 940 -- 944, and 947 -- 948, note 11)

The Historical and Constitutional Development of Natural Resources Law

Session 4 (9/4)

Acquiring and Allocating Public Lands and Natural Resources; the Equal Footing Doctrine and the Public Trust Doctrine
(Text, Chapter 2, pages 78 – 115)

Session 5 (9/9)

Federal Disposition and Retention of Public Lands and Resources: Land Grants to States, Settlers, and Railroads; the Origins of National Parks, Forests, and Wildlife Refuges (United States v. Midwest Oil Co.); the Taylor Grazing Act of 1934 and the Federal Land Policy and Management Act of 1976
(Text, Chapter 2, pages 115 – 144)

Session 6 (9/11)

Federal Power over Natural Resources Management: the Property Clause (Kleppe v. New Mexico and Minnesota v. Block); the early Commerce Clause (Geer v. Connecticut); and the Treaty Power (Missouri v. Holland)
(Text, Chapter 2, pages 144 – 171)

Session 7 (9/16)

The Flow (and Ebb?) of the Commerce Clause (Gibbs v. Babbitt); the Takings Limitation on Federal and State Power over Natural Resources (Lucas v. South Carolina Coastal Council and problem exercise based on Loveladies Harbor, Inc. v. United States); Other Limitations on Federal and State Power over Natural Resources
(Text, Chapter 2, pages 171 – 204)

The Role of Natural Resource Agencies; the Administrative Procedure Act; the National Environmental Policy Act; and Planning

Session 8 (9/18)

The Role of Agencies in Natural Resource Management; introduction to the Administrative Procedure Act (APA) – Rulemaking and Adjudication (Text, Chapter 3, pages 205 – 223; xeroxed hand-out)

Session 9 (9/23)

Judicial Review of Agency Action under the APA (Northern Spotted Owl v. Hodel); introduction to Standing (Lujan v. Defenders of Wildlife); Ripeness, Exhaustion, and the Timing of Judicial Review (Text, Chapter 3, pages 223 – 253)

Session 10 (9/25)

Introduction to the National Environmental Policy Act (Thomas v. Peterson); the Essential Elements of an Environmental Impact Statement (Citizens Against Burlington v. Busey) (Text, Chapter 3, pages 253 – 283)

Session 11 (9/30)

Introduction to Natural Resources Planning; Ripeness Revisited (Ohio Forestry Association v. Sierra Club); Problem Exercise in Land-Use Planning (Text, Chapter 3, pages 283 – 309)

Biodiversity, Wildlife, and the Endangered Species Act

Session 12 (10/2)

What is Biodiversity, and Why Preserve It? Managing the Wildlife Commons: Who Owns Wildlife? International Approaches (Law of the Sea Convention, Convention on Biological Diversity) (Text, Chapter 4, pages 310 – 334)

Session 13 (10/7)

Policy Instruments for Protecting Wildlife; U.S. Wildlife Laws; the Endangered Species Act (ESA): Listing (Hatchery Salmon Listing Case Study (Alsea Valley Alliance v. Evans)); Designation of Critical Habitat; Conservation Programs (Text, Chapter 4, pages 334 – 359)

Session 14 (10/9)

The ESA: Consultation, Jeopardy, and Adverse Modification of Critical Habitat (Southwest Center for Biological Diversity v. U. S. Bureau of Reclamation); Prohibition Against Takes (Palila v. Hawaii Department of Land and Natural Resources and Babbitt v. Sweet Home Chapter of Communities for a Great Oregon); Pygmy Owl Problem Exercise (Text, Chapter 4, pages 359 – 389)

Session 15 (10/14)

Delhi-Sands Flower-Loving Fly Case Study (Text, Chapter 4, pages 411 – 425)

Mineral Resources

Session 16 (10/16)

An Introduction to Mining; Mineral Property; Who Owns the Minerals? Defining the Mineral Estate (Text, Chapter 9, pages 980 – 981, 998 – 1032)

Session 17 (10/21)

Mining on the Public Lands (Text, Chapter 9, pages 1033 - 1074)

Session 18 (10/23)

Mining on the Public Lands continued (Text, Chapter 9, 1075 - 1098)

Session 19 (10/28)

Mineral Sales and Leases on the Public Lands (Text, Chapter 9, pages 1098 – 1121)

Forest Resources

Session 20 (10/30)

Forestry Law; West Virginia Division of Izaak Walton League of America, Inc. v. Butz; National Forest Land and Resource Management Planning; Sierra Club v. Espy (Text, Chapter 10, pages 1175 – 1199)

Session 21 (11/4)

Introduction to Forest Resources and the Timber Industry; Biodiversity Conservation and Forests; Idaho Sporting Congress v. Rittenhouse; Sierra Club v. Marita
(Text, Chapter 10, pages 1141 – 1175 (skim); pages 1199 – 1216)

Session 22 (11/6)

Roads and National Forests; Kootenai Tribe of Idaho v. Veneman; Fire in Forest Management
(Text, Chapter 10, pages 1216 – 1231)

Protected Lands

Session 23 (11/11)

Introduction; National Parks; Snowmobiles in Yellowstone Case Study; Sierra Club v. Department of the Interior I, II, and III; National Monuments; Mountain States Legal Foundation v. Bush and Tulare County v. George W. Bush
(Text, Chapter 6, pages 553 – 558, 574 – 609)

Session 24 (11/13)

Wilderness; The Wilderness Society v. United States Fish and Wildlife Service; Case Study: Roding the Izembek National Wildlife Refuge; Southern Utah Wilderness Alliance v. Norton
(Text, Chapter 6, pages 609 – 641)

Session 25 (11/18)

Wildlife Refuges; Wild and Scenic Rivers; Land and Water Conservation Fund; Preservation on Multiple Use Lands; Mountain States Legal Foundation v. Hodel; Case Study: Wilderness Re-inventory and Management in Utah; Alternatives to Public Lands Preservation
(Text, Chapter 6, pages 641 – 664; 690 – 700)

Session 26 (11/20)

Review