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LAW CENTER

WATER LAW & POLICY
FALL 2019

PROFESSOR BLAKE HUDSON

Tu/Th 10:30 am-Noon
Classroom TBA

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Best way to contact me: **email**

OFFICE HOURS: available by appointment

OVERVIEW AND GOALS OF THE COURSE

Water is the natural resource most essential to life. As human populations increase, water resources are evermore stressed. This stress has both quantitative and qualitative components—the volume of important water resources in many locations is becoming strained and water in other locations is polluted through industrial, agricultural, and other human development activities. In this course we will explore legal regimes for managing both water quantity and quality. We will discuss the common law origins of water law; modern state legislative provisions aimed at modifying common law regimes; federal water interests; water quality regulation (state and federal); the intersection of water management and the management of other natural resources, like endangered species; and constitutional issues related to water regulation.

We will study water law and policy by reviewing scholarly articles, case law, and water management statutes and regulations. While we will focus on the most significant laws and cases, this course will also emphasize the scientific, political and economic issues driving water use and management conflicts. Furthermore, we will discuss the cross-section of water law and policy with many other areas of law, including natural resources, administrative, property and land use, constitutional, and international law.

REQUIRED TEXT

ADLER, CRAIG, AND HALL, *Modern Water Law* (Foundation Press, 2nd Ed. 2018)

I may assign PDFs or other supplemental readings from time to time. These may be found under “supplemental reading materials” on TWEN. If you have trouble accessing TWEN for any reason, please let me know.

LAPTOP AND TECHNOLOGY POLICY – *PLEASE NOTE*

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I do not allow laptop, smartphone, or other technology use in the classroom. While I appreciate that this is an inconvenience to those who prefer typing their notes during class, after having taught both ways I have found that a classroom without the distractions created by personal computing devices results in a much better learning environment. This is especially true in a smaller course like water law.

ATTENDANCE AND PARTICIPATION

This is a vigorous course that relies heavily on student participation and attendance is mandatory. Students missing **4 or more** classes may be penalized up to one full grade point. Sick days, etc. **must** be utilized out of **this** allotment. In accord with ABA rules, students missing **6 or more** classes may not be permitted to complete the course. Moreover, quality of attendance—including class participation—will be evaluated (see below) and students should be prepared to meet this requirement. In short, students should miss as few classes as possible, if any at all.

Class participation and preparation are required. Your grade may be adjusted up or down one level depending on class participation. All students are encouraged to volunteer comments and questions. I expect you to complete the assigned readings and that you are prepared to participate. ***I will be calling on students to summarize cases and others aspects of the reading.*** Participation and preparation are not based upon *quantity* of comments, but rather *quality*. General level of interest demonstrated outside the classroom can count toward your participation score.

GRADING AND ASSESSMENT

The grade in the course will be based on participation and a final exam. As noted, participation includes not only in-class participation, but also attendance at out-of-class presentations, workshops, or field trips that may be assigned later in the semester (with exceptions granted for approved schedule conflicts, such as class or work conflicts). More details regarding the final exam will be forthcoming later in the semester.

CLASS RESCHEDULING

I may need to cancel classes from time to time for professional reasons. I will let you know of any cancellations as we proceed through the semester. If any classes require make-up classes to cover the affected dates, we will schedule those accordingly. I will do my best to ensure that make-up classes do not conflict with any of your other classes. For anyone unable to attend a make-up class and with an unusual situation preventing attendance, please let me know and we will address it.

REQUIRED READINGS

Rather than attempt to plan the day-to-day discussions months in advance, I will post assignment sheets on TWEN in two week intervals in order to maintain flexibility in our approach (under “assignment sheets” on TWEN). You should receive each new assignment sheet by the

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Friday prior to that assignment. This will allow you plenty of time to read and process the Tuesday assignment before class on that day.

Over the course of this semester, we will endeavor to read ADLER, CRAIG, AND HALL chapters 1-5, 7-8, 11-12 and 14, although potentially skipping portions of certain chapters or jumping outside of those chapters for some material. We will try to cover between 15 and 25 pages of text in each class. The chart below represents what we plan to cover, but this is only meant as a general guideline for what we will attempt to accomplish this semester. We may not cover every topic listed below, and I may change the assignments or even dispense with entire topics if necessary. Also, I may add reading materials, although you will be given plenty of time to read these in advance.

<p>CHAPTER 1: INTRODUCTION</p> <p>The Aquatic Cycle</p> <p>Water use in the U.S. and Globally</p> <p>Water Quality, Ecosystem Health, and Climate Change</p> <p>The Emerging Human Right to Water</p>
<p>CHAPTER 2: RIPARIAN LAW</p> <p>What is Riparian Property and What are Riparian Rights</p> <p>Consumptive Riparian Uses and Beyond</p>
<p>CHAPTER 3: HISTORY AND PRINCIPLES OF PRIOR APPROPRIATION</p> <p>Origins and Variations of Prior Appropriation</p> <p>Elements and Attributes of Appropriative Rights</p>
<p>CHAPTER 4: GROUNDWATER</p> <p>Basic Groundwater Hydrology</p> <p>Common-Law Groundwater Doctrines</p> <p>Groundwater-Surface Water Interactions</p>
<p>CHAPTER 7: PUBLIC RIGHTS IN WATER: THE PUBLIC TRUST DOCTRINE</p> <p>Origins of the Public Trust Doctrine</p> <p>State Versions of the Public Trust Doctrine</p>
<p>CHAPTER 8: FEDERAL WATER INTERESTS</p>

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Federal Reserved Water Rights Federal Water Projects
CHAPTER 11: THE INTERSECTION OF WATER QUALITY AND WATER QUANTITY Water Quality Protection Under the Common Law The Federal Clean Water Act
CHAPTER 12: THE FEDERAL ENDANGERED SPECIES ACT, WATER MANAGEMENT, AND WATER RIGHTS Species Listing; Critical Habitat Designation Section 7 and the Federal Government Section 9 and Private Actors
CHAPTER 14: PUBLIC INTERESTS, PRIVATE RIGHTS IN WATER, AND CONSTITUTIONAL TAKINGS CLAIMS Overview of Takings Law Defining the Property Interest Physical Versus Regulatory Takings of Water Rights Calculating Takings Compensation