

WATER LAW
Fall 2021
Course Number 6341
Section Number 27705

Prof. Tracy Hester

Class Hours: Tuesday-Thursday 2:30 pm to 3:45 pm
111 TUII and online via Zoom

Office Hours: I'll hold open office hours via Zoom on Wednesdays from 1:30 pm to 4:30 pm at [my office hours Zoom site](#). I'll also be available in my office at TUII-142, but will ask that you comply with CDC safety protocols for in-person meetings. Per UHLC policy, we cannot meet indoors in groups larger than 3.

You can also reach me at 713-743-1152 or tdheste2@central.uh.edu to schedule a visit at any other time.

Course Description: Welcome to Water Law!

Water is the indispensable resource. Yet clean and usable water is surprisingly scarce, and our supplies of it have come under stress from demands by growing cities, vital agriculture operations, industrial and power production processes, and recreational uses. Beyond our human vantage, ecosystems and imperiled species also depend on water for their survival, and climate change has ramped up even more pressure on our increasingly erratic supplies.

In this course, we'll explore the legal doctrines that govern the production, use, and discharge of water. This survey will include an overview of differing rights systems to allocate access to water (e.g., riparian vs. prior allocation systems); special rules for water under federal jurisdiction; the unique legal status of groundwater; the intersection of water management and endangered species protection; and the difficult legal questions raised when water regulation affects other constitutionally protected rights.

We will explore this broad field together with three goals:

- to acquaint you with the fundamentals of key federal and state legal regimes that govern water management and production. This class will examine

systems used throughout the United States, but we will also focus as much as we can on Texas water law and its quirks;

- to explore some of the most common legal strategies and analytical skills that govern this area (as well as other legal fields with strong administrative or regulatory dimensions), and
- to provide some fundamental forms or legal documents to help you handle water rights issues that might arise in your future legal work.

The class will use a combination of lectures, class discussions, case studies, in-class exercises and sample problems. Where possible, I'll introduce real-life on-going matters and projects to provide an opportunity to wrestle with some of the most active questions in modern water law practice.

As an outcome of taking this class, you should be able to identify key water rights legal issues that might affect government actions, business activities, human health, and protected natural resources and species.

Course Materials:

We will use the following course book: R. Adler, Robin Kundis Craig, and Noah Hall, *Modern Water Law* (2d ed. 2018).

In addition, I'll distribute class handouts and supplemental materials as needed. We'll also the Blackboard class website where you can access additional optional materials as well as recordings of class lectures.

Assignments

Our reading assignments will follow the course syllabus, although we may vary a bit in pace and coverage as the semester progresses (i.e., expect changes as we go). Of course, you should read each day's assigned materials in advance and be prepared to discuss them in class.

Class Participation

In general, I will treat you in class the same way that I'd treat you as a new attorney working for me at a law firm. So please be prepared to discuss the readings assigned for that day as well as to think creatively about how to apply those materials to new situations and hypotheticals. I'll call on you pursuant to an on-call roster, but I will expect everyone to jump into class discussions even if you're not on call.

Because of the pandemic, you can attend as many sessions via Zoom as you feel necessary to maintain your health and safety. I will teach physically in the classroom, and will keep an open Zoom session for every class. We'll also upload recordings of every Zoom session to the class Blackboard website.

Grading

Your grade in this class will be based on a final examination. This exam will last three hours, and will consist of three essay questions (one hour each question). You can use your personal notes or outlines that you create, your text book for this class, and any handouts. No commercial outlines or briefs, please. We'll discuss the final exam's format and other issues later in the semester.

I'll adjust grades by one notch (i.e., a half-grade) based on class participation as merited. It works both ways - you can raise your grade with energetic and insightful participation, or you can lower it by consistently failing to prepare adequately for class.

Personal Resources

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus. Go to http://www.uh.edu/caps/outreach/lets_talk.html.

Discrimination and Sexual Harassment/Misconduct Policy

The University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. For more information, please refer to the University system's Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08, available here:

<http://www.uhsystem.edu/compliance-ethics/uhs-policies/sams/01-general-information/index.php>

http://www.uhsystem.edu/compliance-ethics/_docs/sam/01/1d7.pdf
(antidiscrimination)

http://www.uhsystem.edu/compliance-ethics/_docs/sam/01/1d8.pdf
(sexual misconduct)

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. Please note that the reporting obligations under the sexual misconduct policy reach to employees and students. Also, as a required reporting party, Law Center employees and faculty members are not a confidential resource.

Recording of Class

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the [Center for Students with DisABILITIES](#). If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform.

I will record all of our classes unless I specifically notify you otherwise. You may use my recordings for your own studying and notetaking, but the University does not authorize you to share them with *anyone* without my prior written approval. Per University policy, failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

Syllabus Changes

Due to the changing nature of the COVID-19 pandemic, please note that I may need to modify the course syllabus and may do so at any time. I'll announce those changes as quickly as possible through direct emails to all of you as well as postings to the class BlackBoard site.

Language Required by the University of Houston for All Syllabi:

COVID-19 Information

Students are encouraged to visit the University's [COVID-19](#) website for important information including on-campus testing, vaccines, diagnosis and symptom protocols, campus cleaning and safety practices, report forms, and positive cases on campus. Please check the website throughout the semester for updates.

Vaccinations

Data suggests that vaccination remains the best intervention for reliable protection against COVID-19. Students are asked to familiarize themselves with pertinent [vaccine information](#), consult with their health care provider. The University strongly encourages all students, faculty and staff to be vaccinated.

Reasonable Academic Adjustments/Auxiliary Aids

The University of Houston complies with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, pertaining to the provision of reasonable academic adjustments/auxiliary aids for disabled students. In accordance with Section 504 and ADA guidelines, UH strives to provide reasonable academic adjustments/auxiliary aids to students who request and require them. If you believe that you have a disability requiring an academic adjustments/auxiliary aid, please contact [the Justin Dart Jr. Student Accessibility Center](#) (formerly the Justin Dart, Jr. Center for Students with DisABILITIES).

Excused Absence Policy

Regular class attendance, participation, and engagement in coursework are important contributors to student success. Absences may be excused as provided in the University of Houston [Undergraduate Excused Absence Policy](#) and [Graduate Excused Absence Policy](#) for reasons including: medical illness of student or close relative, death of a close family member, legal or government proceeding that a student is obligated to attend, recognized professional and educational activities where the student is presenting, and University-sponsored activity or athletic competition. Under these policies, students with excused absences will be provided with an opportunity to make up any quiz, exam or other work that contributes to the course grade or a satisfactory alternative. Please read the full policy for details regarding reasons for excused absences, the approval process, and extended absences.

Additional policies address absences related to military service, religious holy days, pregnancy and related conditions, and disability.

Week 1 (Aug. 24, 26)

Fundamental Concepts of Water Law; Introduction to Riparian Rights

Assignments:	Class 1	1-36
	Class 2	36-64

Week 2 (Aug. 31, Sept. 2)

Riparian Rights to Take and Use Fresh Water

Assignments:	Class 1	64-90
	Class 2	90-110

Week 3 (Sept. 7, 9)

Introduction to Prior Appropriation Approach to Water Rights; Elements and Attributes of Appropriative Rights

Assignments:	Class 1	110-136
	Class 2	136-170

Week 4 (Sept. 14, 16)

Legal Attributes of Appropriative Rights; Introduction to Groundwater Rights

Assignments:	Class 1	170-202
	Class 2	215-241, 246 n.3-4.

Week 5 (Sept. 21, 23)

Prior Appropriation of Groundwater Rights; Modern Applications of Water Law Principles

Assignment:	Class 1	247-279
	Class 2	281-310

Week 6 (Sept. 28, 30)

Modern Applications of Water Law Principles – Innovations with Prior Appropriation

Assignment:	Class 1	310-342
	Class 2	NO CLASS – I’LL BE TRAVELING. I may record a review lecture based on class progress.

Week 7 (Oct. 5, 7)

Control and Ownership of Navigable Waters

Assignment:	Class 1	343-379
	Class 2	380-399

Week 8 (Oct. 12, 14)

Public Rights in Water – Public Trust Doctrine; Federal Water Interests

Assignment:	Class 1	401-434
	Class 2	454-462 463-490

Week 9 (Oct. 19, 21)

Federal Water Projects; Interstate Water Management

Assignment:	Class 1	490-532
	Class 2	533-550

Week 10 (Oct. 26, 28)

Equitable Apportionment of Interstate Waters; Interstate Compacts

Assignment:	Class 1	550-578
	Class 2	579-606

Week 11 (Nov. 2, 4)

The Water-Energy Nexus

Assignment:	Class 1	607-627
	Class 2	627-652

Week 12 (Nov. 9, 11)

Endangered Species Act Impacts on Water Use

Assignment:	Class 1	719-735, 743-752, 763-769
	Class 2	769-784

Week 13 (Nov. 16, 18)

Takings Claims and Water Rights

Assignment:	Class 1	865-897
	Class 2	897-930

Week 14 (Nov. 23, then Thanksgiving holiday break)

Texas Water Rights and Permitting

Assignment: Excerpts from S.B.1

Texas Master Water Plan

[*Quadvest LP et al. v. San Jacinto River Authority*, No. 20-20447-CV-4508 \(5th Cir. 2021\)](#)

Week 15 (Nov. 30, 2)

Voluntary review session on Nov. 30. No class on Dec. 2.