Water Law –Smith (Spring 2016)
susanlsmithor@gmail.com or (503)586-8619 (cell).
Office hours –10:45-noon, M, T, W; Th and F by appointment.

Goals

Achieve basic understanding of water resources
Understand fundamentals of state, federal and international laws about protection and use of water
Apply simpler aspects of water law in a practice context
Gain exposure to more complicated water law issues
Build familiarity with water resources policy issues

Assessment

• Two one-hour quizzes taken on WISE, by midnight Sunday after weeks 6 and 11, worth 30% total (15% each).

• Brief paper -- analytical legal, policy or case study worth 50%. Success at meeting interim and final dates is one of five factors in grade: planning, research, analysis, creativity, and writing.
  o Concisely and precisely analyze the shortcomings of some aspect of existing water law/policy; lucidly propose, explain, and justify (in as much detail as possible given page constraints) your proposed alternative.
  o Prepare a case study of a water conflict that discusses scientific, economic, social, political and legal issues associated with the conflict.

Do not waste time on unnecessary background material – your intended audience should be water resource professionals (e.g. don’t explain the difference between riparianism and prior appropriation; the goals of the ESA). Use appropriate citations to primary and secondary sources of authority. Final full bibliography of sources consulted is required, so keep a research log.

  Thesis statement with basic structural outline due noon February 1; full outline and initial bibliography identifying all relevant law review articles, books, and gray literature due noon February 29; final paper with full bibliography due noon April 6th.

• Make frequent, high quality contributions to class discussion throughout the term, worth 20% total.

Class Participation

Attendance at and preparation for every class is important. You may miss three classes without penalty. Fourth and fifth class absences will result in a one grade reduction (e.g. A- to B+) for each absence unless you have a compelling excuse for THAT absence (e.g. death in family, hospitalization, etc.). Do not provide me with excuses for other absences. Under ABA rules, if you miss six classes for whatever reason, you will be administratively withdrawn for failure to attend.
Klamath Basin field trip

We will set a mutually agreeable date to spend a three day weekend toward the spring exploring the water issues in the Klamath Basin. That will provide an opportunity to discuss water issues with state and federal government officials, scientists, tribal, environmental, and hydropower representatives and farmers. To receive extra credit, you will write a brief analytic case study and reflection (5 pages single-spaced) on your experience. You will receive extra credit depending on the quality of your written case study up to 2/3 of a grade (B- to B+; B to A-; B+ to A; A- to A+).

Books

Czech, Principles of Water Resources-introductory water resources text ("Principles") (OK if you choose not to buy)
Thompson and friends, Legal Control of Water Resources-standard water law casebook ("Legal Control")
Other materials will be on resources page of WISE site – organized by week.

You must have in class access to statutory and regulatory materials we study -- federal and state statutes and regulations, including Oregon water statute and regulations. Either paper or on line access is acceptable. You can print statutes from web and/or you can buy Oregon statutes and regulations from the Legislative Counsel/OWRD.

Schedule of Topics

This is YOUR class. The schedule of topics listed below is preliminary. We will agree on a schedule during the first class and may make adjustments according to your needs and desires.
Preliminary Schedule of Topics

Part I: Introduction to Water Resources

Week 1

M Overview
Read Week 1 resources on WISE; skim Annenberg and read UNESCO with more care

W Technical Aspects of Water Resources
Review/skim Principles Chap 2, 3, 4, and 217-234 of Chap 7

Week 2

M Water Resources Politics and Players: Klamath Basin example
Review/skim Principles Chap 8 and 9

W Economics of Water
Read Principles Chap 10

Week 3

M Ethics of Water
Read Week 3 resources

Part II: State Water Law

Week 3 (cont.)

W Evolution of State Laws Allocating Water; Riparian Doctrines – Assignment 1
Read Legal Control Chap 2

Week 4

M Prior Appropriation Doctrines – Assignment 2
Read Legal Control Chap 3

W Prior Appropriation Doctrines
Read Legal Control Chap 4

Week 5

M State Administrative Permitting Systems – Assignment 3
Read Legal Control Chap 5

W Traditional Groundwater Doctrines – Assignment 4
Read Legal Control Chap 6
Week 6

**M** Drought Tools: Surface Storage
Read Week 6 Resources

**W** Drought Tools: Inter-basin Transfers, Water Marketing and Water Banking
Read Week 6 Resources

*Quiz 1 on water resources and state water law due MONDAY*

**Part III: Federal Water Law**

Week 7

**M** Review Quiz 1; Taking Water Rights

**W** Public Rights: State Ownership & Federal Navigational Servitude

Week 8

**M** Public Rights: Recreational Use and Access

**W** Public Rights: Public Trust Doctrine

Week 9

**M** Federal Reserved Rights and Tribal Rights

**W** Federal Environmental Protection and Water Rights

*Legal Control* Chap 9

Week 10

**M** The Klamath Basin

**W** The Klamath Basin

Week 11

**M** Interstate Allocation

**W** Interstate Conflicts

*Quiz 2 on federal water law due Monday*
Part IV International Water Law and Emerging Global Issues

Week 12

M Review Quiz 2; International Water Law

W Emerging Global Issues – Water and Human Rights

Th potluck April 13 at 5:30 pm, 145 Washington St S

F PAPER DUE FRIDAY at Noon

Week 13

M Emerging Global Issues-Water and Climate Change

W Discussion of Student Papers