Summary:
This course provides a broad discussion and debate of public policy issues relating to the use and management of natural resources in the United States. We will examine in detail the major natural resource categories and review the means and techniques available to federal, state and local governments to plan and protect the natural resources reviewed. The course focus is on the relationship between science, law and planning as the proper means for formulating public policy. An underlying presumption is that natural resources cannot be protected unless: (1) governments embrace a holistic—scientific, planning and legal—vision of natural systems and (2) planners and policy makers understand the link between natural resource management and historic concepts of property and property ownership.

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<th>DATE</th>
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<td>February 2</td>
<td>Topic 1: The Origin of Natural Resource Management Laws: The Property Clause, the Public Trust Doctrine, the Wilderness Act and a Brief Summary of Relevant Property Law. We will discuss the Property Clause of the U.S. Constitution and its impact on acquisition of, access to and disposition of, federal lands. We will discuss the Public Trust Doctrine and its constant evolution and the</td>
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Wilderness Act and its implementation and ramifications. We will focus on the basic foundational principles of real property ownership—current and future—and what these historic principles mean in relation to the protection of natural resources. We will discuss how restrictions on estates in land can be used to protect natural resources, the mechanisms for imposing and removing these restrictions and state common law reactions to “perpetual” restrictions on real property. We will review the use of easements as a common law and statutory technique for protecting natural resources on a local, state and federal level. 


February 9

Topic 1, continued

February 16

NO CLASS: University Holiday

February 19*

Topic 2: The Natural Resources and the Role of the Federal Government: Management of and Planning for,

February 23 OPEN

March 2 Topic 3: Takings Law and Natural Resource Policy. The extent to which government may permissibly regulate private property to protect natural resources without “going too far” is a recurring theme in natural resource policy debates. The debate was largely academic, however, as the courts have consistently ruled that a regulatory taking is a measurable action, one that can be determined by a

March 9

Topic 4: Administrative Agencies: Government’s “Fourth” Branch and Suing Government for Natural Resource Damages: The Difficult Issues of Standing, Ripeness and Mootness. Most failures of government to protect natural resources—those discussed all semester—are not reviewable by the Courts for reasons often defended as the need to preserve judicial resources or “judicial economy”. We will discuss the practical effects of bars to the courtroom and creative means to bring cases and controversies to court. Cases and Readings: Northwest Coalition v US EPA, 920 F.Supp. 2d 1168 (2013),
March 16  

NO CLASS: University Holiday

March 23  


Brief outline or table of contents of Final Paper Due.
March 30

Topic 6: The Natural Resources: Water Law (2 weeks).

Part 1: Numerous federal laws have been promulgated designed to protect ground, surface and drinking water resources. For the most part, these laws have been remarkably successful in protecting the nation’s water resources, despite the reliance on municipal enforcement of state and federal plans designed to protect watersheds and “source waters”. We will discuss the major federal water resource initiatives (including the Oceans Act), but spend the majority of the time reviewing the management options available to local and regional governments to protect water resources. We will also spend time discussing water law as a property interest and its current source of friction between states, municipalities and Tribal governments. Cases and Readings: Winters v. United States, 207 U.S. 564 (1908), Arizona v. California, 373 U.S. 546 (1963) (see also, California v. U.S., 438 U.S. 645, (1978)), United States v. Anderson, 736 F.2d 1358 (1984), United States v. Washington, 375 F.Supp.2d 1050 (2005) (for related issues in Hawaii, see In re Contested Case Hearing on Water Use Permit Application filed by Kukui (Molokai), Inc., 116 Hawaii 481 (2007)).

Draft bibliography/reference listing due.

April 6


Folklore abounds as to the American Indian’s relationship with the natural resources and the U.S. Government’s destruction of historic Indian settlements. We will focus our discussion on the trustee relationship between the federal government and Tribes and what that means regarding the obligation of the federal government to be fiduciaries of natural resources relied upon by Tribes and American Indians. We will discuss how and why the

April 13

Topic 7: Natural Resources and Disaster Planning:

April 20

NO CLASS: University Holiday
April 27 Research Paper Discussion. Participants will present, in an informal setting, the results, findings and/or conclusions of their research papers and/or memoranda.

Final paper due.

Course Requirements:
1. Class attendance and participation.
2. Completion of a research paper or policy memorandum on a natural resource policy, legal issue or event of your choosing (national or international).
3. Presentation of the findings of your research before the class in an informal setting.

Recommended Texts:

NOTES:
• I am pleased to answer questions raised during the course and discuss matters related to it anytime. Please feel free to schedule an appointment with me, email me or call me.
• My e-mail address is: jon.witten@tufts.edu